

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 CIVIL DIVISION
5 JAMES MORALES,
6 PLAINTIFF,
7 -against- Case No.:
8 1:16-cv-02134-ALC-JLC
9 KAVULICH & ASSOCIATES, P.C., GARY
10 KAVULICH, ROSEWALL GARDENS ASSOCIATES, LP,
F/K/A ROSEWALL GARDENS ASSOCIATES, and
ROSEWALL, INC.,
11 DEFENDANTS.
12 DATE: November 17, 2016
13 TIME: 9:30 A.M.
14
15 CONTINUED DEPOSITION of the
16 Defendants, KAVULICH & ASSOCIATES, P.C. and
17 GARY KAVULICH, by a witness GARY
18 KAVULICH, taken by the Plaintiff, pursuant
19 to a Notice of Appearance and to the
20 Federal Rules of Civil Procedure, held at
21 the Law Office of Ahmad Keshavarz, 16 Court
22 Street, Brooklyn, New York 11241, before
23 Elizabeth Forero, a Notary Public of the
24 State of New York.

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1 APPEARANCES:
2
3 LAW OFFICE OF AHMAD KESHAVARZ
4 Attorneys for the Plaintiff
5 JAMES MORALES
16 Court Street
Brooklyn, New York 11241
6 BY: AHMAD KESHAVARZ, ESQ.
-and-
7 JESSICA MOODY, LAW CLERK

9 CAMBA LEGAL SERVICES, INC.
10 Co-Counsel for Plaintiff
JAMES MORALES
11 885 Flatbush Avenue
Brooklyn, New York 11226
BY: MELISSA KOVEN, ESQ.

13 MITCHELL L. PASHKIN, ESQ.
14 Attorneys for the Defendants
KAVULICH & ASSOCIATES, P.C., GARY
15 KAVULICH, ROSEWALL GARDENS ASSOCIATES,
LP, F/K/A ROSEWALL GARDENS ASSOCIATES,
ROSEWALL, INC.
16 775 Park Avenue, Suite 255
Huntington, New York 11743
BY: MITCHELL L. PASHKIN, ESQ.

20 * * *

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2 FEDERAL STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED by and
between the counsel for the respective
parties herein that the sealing, filing and
certification of the within deposition be
waived; that the original of the deposition
may be signed and sworn to by the witness
before anyone authorized to administer an
oath, with the same effect as if signed
before a Judge of the Court; that an
unsigned copy of the deposition may be used
with the same force and effect as if signed
by the witness, 30 days after service of
the original & 1 copy of same upon counsel
for the witness.

IT IS FURTHER STIPULATED AND AGREED that
all objections except as to form, are
reserved to the time of trial.

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G. KAVULICH

GARY KAVULICH, called as a
witness, having been first duly sworn by a
Notary Public of the State of New York, was
examined and testified as follows:

EXAMINATION BY

MR. KESHAVARZ:

Q. Please state your name for the
record.

A. Gary Kavulich.

Q. Where do you reside?

A. 147 Grace Church Street, Rye,

New York 10580.

Q. Good morning. Thank you for
coming back. So let's pick up where we
left off before but let's go over
logistics. I know we are running late.
What time do you have to leave today?

A. 2:30.

Q. I was going through questions,
but I know we had an agreement before that
we could use the other deposition testimony
in this case at least for background
purposes; right?

MR. PASHKIN: Yes.

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1 G. KAVULICH
 2 MR. KESHAVARZ: Would you be
 3 agreeable to use it for all purposes
 4 because I don't want to go through
 5 all questions that may or may not be
 6 background. So can we use it for all
 7 purposes generally?

8 MR. PASHKIN: Subject to, you
 9 know, my right to object to
 10 relevance, in other words, is that
 11 fair?

12 MR. KESHAVARZ: If you objected
 13 to form before.

14 MR. PASHKIN: In other words, I
 15 don't, in other words, I can't, you
 16 want to use it in general, I don't
 17 know exactly how you want to use it.
 18 I just want to reserve my rights, in
 19 other words, you try to take a
 20 deposition and an answer in that
 21 question and say for whatever reason,
 22 I can't know what you are going to
 23 do. I want to reserve my right to
 24 object to its use based on relevance.
 25 Is that fair?

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61 G. KAVULICH

MR. KESHAVARZ: Yes, that
 should help.

Q. Mr. Kavulich, were there any
 e-mails sent or received regarding Mr.
 Morales or his account or any attempt to
 collect on his account?

A. Yes.

Q. Do you know where those e-mails
 are?

A. Whatever e-mails we have, I
 gave to Mitch.

Q. I could be mistaken but for the
 other case we have e-mails. But for this
 case, I don't believe we have e-mails.

MR. PASHKIN: I checked last
 night; it was in my first
 Supplemental Response.

MR. KESHAVARZ: I have a first
 Supplemental Response that includes
 screen shots. That was dated
 November 8th. That is what I got.
 Then on November 14th, I got an
 accounting and then -- I see it.
 Okay. Thanks.

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1 G. KAVULICH
 2 Q. Are there any other e-mails
 3 related to Mr. Morales other than what you
 4 produced in this case?

5 A. Whatever I had, I gave them to
 6 Mitch.

7 MR. KESHAVARZ: You gave them
 8 all over?

9 MR. PASHKIN: Right.

10 Q. I am showing, and we will it
 11 mark as an exhibit in a second, but tell
 12 me, I am showing what has been Bates
 13 stamped Morales 51, 52.

14 MR. KESHAVARZ: Off the record.

15 (Whereupon, an off-the-record
 16 discussion was held.)

17 Q. Before I mark this as an
 18 exhibit, I am showing documents Bates
 19 stamped Morales 51 to 53. Can you identify
 20 what these pages are and which ones go
 21 together?

22 A. The first page is information
 23 subpoena with restraining notice.

24 Q. Go through the other pages and
 25 tell me what documents go together.

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G. KAVULICH

A. That goes by itself. This is a
 property execution. The second page is, I
 guess, it is the actual levy from Marshal
 Bigel to TD Bank.

Q. The levy is Bates stamped 53?

A. Yes.

MR. KESHAVARZ: Let's mark
 these as separate exhibits
 Plaintiff's 1, 2, 3.

(Whereupon, the aforementioned
 documents were marked as Plaintiff's
 Exhibits 1, 2 and 3 for
 identification as of this date by the
 Reporter.)

Q. I am showing what has been
 marked as Exhibits 1, 2, 3. They were
 Morales 51, 52 and 53. In the process of
 using the information subpoena and
 restraint to my client's bank account, tell
 me what the order is in that process.

A. Fifty-one comes first.

Q. Exhibit 1 comes first?

A. Yes. Then Exhibit 2, and then
 from the marshal would be Exhibit 3.

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2 of 56 sheets

<p>1 G. KAVULICH 2 Q. For Exhibit 3 the amounts 3 listed as due except for poundage are all 4 based on representations you make to the 5 marshal about the amount due; is that 6 correct? A. The judgement amount, yes. The 7 interest the marshal calculates. The 8 statutory fees the marshal calculates and 9 poundage is calculated by the marshal. 10 Q. Let's go through the first 11 step. Number one, the information subpoena 12 with restraining notice, is that your 13 signature on the bottom of the document? A. Yes. 14 Q. Did you sign it on or about the 15 date indicated, which is March 18, 2015? A. I assume I did. I don't 16 remember signing this particular piece of 17 paper. 18 Q. These bank restraint 19 information subpoenas I believe you 20 testified in the other case, if I am not 21 mistaken your staff prints out a stack of 22 bank restraints, information subpoenas, 23 DIAMOND REPORTING (877) 624-3287 info@diamondreporting.com 24 25</p>	<p>1 G. KAVULICH 2 correct in Plaintiff's 1; is that correct? A. Correct. 3 Q. What is, in fact, the amount 4 due on the judgment on the date you signed 5 the information subpoena with restraining 6 notice on March 18, 2015? A. I don't know. 7 Q. We went through some of the 8 terms before and then we used some 9 shorthand. You sign information subpoenas; 10 correct? A. Correct. 11 Q. Information subpoenas are not 12 necessarily with the bank restraint; 13 correct? A. Correct. 14 Q. Are they typically with a bank 15 restraint? A. They are two separate animals. 16 Q. So you have one document called 17 the information subpoena that goes to a 18 bank, usually to say how much money is in 19 the account? A. The information subpoena with a 20 DIAMOND REPORTING (877) 624-3287 info@diamondreporting.com 21 22 23 24 25</p>
<p>64</p>	<p>65</p>
<p>1 G. KAVULICH 2 income executions and so forth and you go 3 through the stack and sign them one at a 4 time? A. Correct. 5 Q. You said before about the 6 number that you signed per day, but we will 7 use whatever that transcript section is. 8 So are all the statements in Exhibit 1 true 9 and correct? A. No. 10 Q. What statements are not 11 correct? A. That there was a judgement 12 against James Morales. 13 Q. Anything else? A. I believe the remaining amounts 14 of the judgment is incorrect. 15 Q. Anything else? A. The index number is missing L & 16 T. 17 Q. Anything else? A. No. 18 Q. What you just testified to are 19 the only things that are not true and</p>	<p>66</p>
<p>DIAMOND REPORTING (877) 624-3287 info@diamondreporting.com</p>	<p>67</p>
<p>20</p>	<p>G. KAVULICH restraining notice is what goes to the 21 bank. 22 Q. Do you ever send information 23 subpoenas without a restraining notice? A. Yes. To a bank? 24 Q. Yes. A. You didn't say that. 25 Q. Generally, do you just send 26 information subpoenas to collect judgments? A. To any entity? 27 Q. Yes. A. Yes. 28 Q. Do you send information 29 subpoenas to banks, just the information 30 subpoena? A. Only if we believe someone is 31 employed with the bank. 32 Q. You send out an income 33 execution; correct? A. Yes. 34 Q. To collect judgements? A. Yes. 35 Q. Are those the three major 36 mechanisms you use to collect on</p>
<p>37</p>	<p>DIAMOND REPORTING (877) 624-3287 info@diamondreporting.com</p>

	G. KAVULICH		G. KAVULICH
1	judgements?	2	garnished from Miss Potter, were not
2	A. Information subpoenas,	3	credited to the amount you were seeking to
3	information subpoenas with restraining	4	collect from Mr. Morales?
4	notices and income executions, yes.	5	A. No, that is not right.
6	Q. If I am going to use the term	6	Q. In what way is that not right?
7	judgment enforcement devices, would you	7	A. Once it was indicated that the
8	understand that to mean all three of those?	8	judgment, one of the judgement enforcement
9	A. Yes.	9	devices, was sent, then the marshal should
10	Q. If you are ever unclear, let me	10	have been told that, no, this is not the
11	know.	11	correct amount.
12	A. Okay.	12	Q. In what way, is it not the
13	Q. When I say "you," you are	13	correct amount?
14	testifying on your own behalf and on behalf	14	A. Because this judgment
15	of your law firm; correct?	15	enforcement device did not account for the
16	A. Yes.	16	monies collected from Miss Potter.
17	Q. So when I say you, will you	17	Q. Why not?
18	understand that to mean both you and the	18	A. Because it was an oversight on
19	law firm?	19	the person who did this.
20	A. I intellectually understand	20	Q. Who is the person that did
21	that. But I ask you to be specific as to	21	this?
22	who you mean in doing things.	22	A. I signed it and Collin printed
23	Q. When I say you, if you are ever	23	it.
24	unclear about what you mean, would you ask	24	Q. Your firm is not trying to deny
25	me to clarify?	25	responsibility?
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	69		71
1	G. KAVULICH	1	G. KAVULICH
2	A. Yes.	2	A. No, not at all.
3	Q. If I ask a question and you	3	Q. You are not personally trying
4	don't ask me to clarify, is it reasonable	4	to deny responsibility?
5	for me to assume you understood the	5	A. No, not at all.
6	question?	6	Q. Now, is the, you talked about
7	A. Yes.	7	before Collin is the person in your office
8	Q. We were talking about Exhibit 1	8	who is responsible for deciding when to
9	the information subpoena and bank	9	issue a post-judgement enforcement;
10	restraint. You indicated that the total	10	correct?
11	amount claimed to be due was incorrect; is	11	A. The computer brings it up, but
12	that right?	12	he is the main person who then goes forward
13	A. Yes.	13	on a particular case or not. Although
14	Q. How do you know that?	14	recently now, I am as involved as well.
15	A. Because it came up in, because	15	Q. After this lawsuit was filed?
16	of this.	16	A. No, after Collin moved to Laos.
17	Q. In what way what do you mean?	17	Q. About when was that?
18	A. Because there is a second	18	A. The end of May or the beginning
19	debtor on this case.	19	of June of 2016.
20	Q. Clara Potter?	20	Q. And as I remember from before
21	A. Yes, against whom the judgement	21	your computer program has a number of
22	is only against. And we had garnished, I	22	things, but one of the things is judgments
23	don't know how much, but we had garnished	23	to be collected upon and on a regular basis
24	some monies from her.	24	it goes through those lists and it pops up
25	Q. Are you saying the monies you	25	a judgment for review to determine whether
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1 G. KAVULICH
 2 additional post-judgment enforcement
 3 mechanisms should be used; is that right?
 4 **A. Yes.**
 5 **Q.** And Collin makes the judgement
 6 about whether to issue the post-judgment
 7 enforcement mechanism?
 8 **A. He and I.**
 9 **Q.** Before he left, it was
 10 primarily he that made the decision about
 11 which post judgment enforcement mechanism
 12 to issue; correct?
 13 **A. Correct.**
 14 **Q.** He made the decision about who
 15 that particular post-judgment enforcement
 16 mechanism should be directed towards;
 17 correct?
 18 **A. Yes.**
 19 **Q.** Such as which bank, which
 20 employer?
 21 **A. Yes.**
 22 **Q.** He would decide which of the
 23 persons listed on the account here, Clara
 24 Potter and James Morales here, he would
 25 made the decision about which one of those

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1 G. KAVULICH
 2 between post-judgment or civil court. They
 3 would give us a list. We would pick up the
 4 file. We would read the documents and
 5 proceed accordingly whether it was a
 6 post-judgment housing court judgement in
 7 these cases or a pure civil action.
 8 **Q.** About how many accounts did
 9 this plaintiff, Rosewall Garden Associates
 10 forward to you for collection?
 11 MR. PASHKIN: Objection to
 12 relevancy.
 13 **A. Maybe a dozen, not many.**
 14 **Q.** During this time you had about
 15 five thousand judgment accounts to collect?
 16 MR. PASHKIN: Objection.
 17 **A. At what time?**
 18 **Q.** You have about five thousand
 19 judgments you are collecting on?
 20 **A. About five thousand.**
 21 **Q.** That's the judgements that come
 22 up when the computer sends a cue to remind
 23 Collin to do income executions?
 24 **A. To search for assets.**
 25 **Q.** That comes up a few times a

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 1 G. KAVULICH
 2 two to issue the post judgment enforcement
 3 mechanism about?
 4 **A. No, he would not distinguish
 5 between these two because the computer
 6 already had all the persons on the
 7 judgment. So he would have just pursued
 8 both.**
 9 **Q.** At what point in time did your
 10 computer have both Mr. Morales and Miss
 11 Potter listed as both judgment debtors for
 12 the account?
 13 **A. When the case was entered.**
 14 **Q.** What do you mean?
 15 **A. When we initially got the case.**
 16 **Q.** You got the case from whom?
 17 **A. From our client.**
 18 **Q.** You got the case from your
 19 client to file a civil action to collect
 20 rent or to engage in post-judgment
 21 collection activities against both Morales
 22 and Potter?
 23 **A. Our client does not, at that
 24 time we don't represent them anymore by the
 25 way, at the time they didn't distinguish**

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 1 G. KAVULICH
 2 year it pops up for each judgement?
 3 **A. No.**
 4 **Q.** How often?
 5 **A. Generally, once a year.**
 6 **Q.** When Rosewall forwarded the
 7 account for Miss Potter and Mr. Morales,
 8 did it tell you that it was a judgment
 9 account?
 10 **A. There were --**
 11 **Q.** Or did it tell you to file a
 12 rent suit?
 13 **A. Again, it does not tell us.**
 14 **Basically, we get a list. We go to the
 15 file, pull out all the documents for that
 16 particular case, and then at the time it
 17 would be given to someone in my office who
 18 would then enter it. We were not given any
 19 direction by the incline as to, again,
 20 proceed on a judgment or do a civil case.**
 21 **Q.** You make that determination
 22 independently?
 23 **A. Correct.**
 24 **Q.** Initially, you filed a civil
 25 suit to collect rent against Miss Potter

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1 G. KAVULICH
 2 and Mr. Morales; correct?
 3 A. No, not to my recollection, no.
 4 Q. You didn't file a civil
 5 collection suit?
 6 A. No.
 7 Q. Did you file a case in civil
 8 court to collect a debt from Mr. Morales
 9 and Miss Potter?
 10 A. That is not my recollection,
 11 no.
 12 Q. We will go through the
 13 documents in a minute. Let's go back to
 14 the amount on Exhibit 1. When Collin
 15 directs these post-judgment enforcement
 16 mechanisms to be issued -- let's just go
 17 through the numbers you testified before.
 18 Let's see if it is clear. About how many,
 19 just information subpoenas, do you sign
 20 during this time period in a day or a week
 21 or a month, about how many?
 22 A. I would say approximately
 23 between, information subpoenas only,
 24 between 80 a week. It could be anywhere
 25 between 70 and 90, but figure about 80

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1 G. KAVULICH
 2 average?
 3 A. Over the court of a year.
 4 Q. About 20 a week on average over
 5 the course of a year?
 6 A. Yes.
 7 Q. You sign motions in some of
 8 these cases?
 9 A. Correct.
 10 Q. Roughly speaking, about how
 11 many?
 12 A. Ten to 15.
 13 Q. What other documents do you
 14 typically sign on average in a week at your
 15 firm?
 16 A. Demand notices, verifications.
 17 Q. What else?
 18 A. Notices of trial, notices of
 19 issue, notices of entry.
 20 Q. Anything else?
 21 A. I am sure but none that come to
 22 mind.
 23 Q. Roughly on average about how
 24 many would you say demand letters would you
 25 say?

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 1 G. KAVULICH
 2 average.
 3 Q. On average about how many
 4 information subpoenas would the bank
 5 restraint, would you sign per week?
 6 A. Probably about the same.
 7 Q. About 80 per week?
 8 A. Approximately, yes.
 9 Q. How many income executions
 10 would you sign?
 11 A. That varies month to month.
 12 Q. What is the typical range?
 13 A. Fifty a month or 60 a month.
 14 Q. So around 15 a week?
 15 A. Yes.
 16 Q. Then you signed all of the
 17 pleadings that go out from your office;
 18 correct?
 19 A. Ninety-nine percent.
 20 Q. You file collection lawsuits;
 21 correct?
 22 A. Correct.
 23 Q. But how many a week on average?
 24 A. It varies. About 20.
 25 Q. Is that about an approximate

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 1 G. KAVULICH
 2 A. Demand notices?
 3 Q. What is a demand notice?
 4 A. Really? You are asking me this
 5 question? Before we start a lawsuit, we
 6 have to serve a demand notice.
 7 Q. We are taking a deposition.
 8 This could be used at trial or summary
 9 judgment. So I have to give questions that
 10 I could present to a jury if need be. So
 11 you have to send a demand notice or your
 12 office sends a demand notice prior to
 13 filing a lawsuit?
 14 A. I do, yes.
 15 Q. Do you also do that prior to
 16 issuing post-judgment enforcement
 17 mechanisms?
 18 A. No.
 19 Q. What notice do you sent for
 20 post-judgment?
 21 A. A 5222.
 22 Q. So let's take them one at a
 23 time. A demand notice, if you were to sign
 24 about 20 complaints, you would sign about,
 25 roughly speaking, around 20 demand notices

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1 G. KAVULICH
 2 or five a week?
 3 **A. Usually or a few more because**
 4 **some come back no good or with a bad**
 5 **service address.**
 6 Q. About 30 or 40 a week?
 7 A. **Thirty.**
 8 Q. So a 5222 notice, what do you
 9 mean by 5222?
 10 **A. It is a notice that goes to the**
 11 **judgment debtor before we send out the**
 12 **judgment enforcement devices.**
 13 Q. Do you send those out once a
 14 year?
 15 A. **No, only when we do the work.**
 16 Q. So if you sign roughly 80
 17 information subpoenas a week, 80
 18 information subpoenas with bank restraints
 19 a week, and 15 wage garnishments a week,
 20 would you sign about 175, 5222 notices a
 21 week or would you sign a little more than
 22 that?
 23 A. **No, it would be whatever we do.**
 24 **If it is 80 bank restraints, then there are**
 25 **80 of those.**

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1 G. KAVULICH
 2 Q. On average, would you say 15 a
 3 week would be an reasonable approximation?
 4 A. **Fifteen to 20.**
 5 Q. Notices of entry a week?
 6 A. **Yes.**
 7 Q. Any other documents other than
 8 those you regularly sign a week?
 9 A. **There may be but those are the**
 10 **ones that come to mind.**
 11 Q. But most of the time at your
 12 office, you are not signing a stack of
 13 documents, you are doing other things or
 14 you tell me?
 15 A. **Most of the time, meaning more**
 16 **than 50 percent, yes, I am doing other**
 17 **things.**
 18 Q. In a typical week, what do you
 19 do on a typical day?
 20 A. **I open cases, search for new**
 21 **addresses, intra-office meetings, go to**
 22 **clients, go to court, although I try to**
 23 **keep that to a minimum, review lists,**
 24 **trouble-shot problems as they come up,**
 25 **respond or engage in various**

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81 G. KAVULICH
 1 Q. Adding up those numbers, this
 2 is roughly, your office sends out about 175
 3 5222 notices a week?
 4 A. **If that's what matches the**
 5 **numbers, yes.**
 6 Q. You said verifications. What
 7 do you mean by verifications?
 8 A. **If we receive a dispute from a**
 9 **debtor we send a verification of the debt.**
 10 Q. Do you send that both to oral
 11 and written disputes?
 12 A. **Yes.**
 13 Q. Approximately how many of those
 14 do you send a week?
 15 A. **One maybe.**
 16 Q. You said notices of trial,
 17 approximately how many notices of trial
 18 would you send out and sign in a week?
 19 A. **Two.**
 20 Q. You said notices of entry,
 21 about how many notices of entry do you sign
 22 in a week?
 23 A. **Fifteen or 20. It is more than**
 24 **a couple.**

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83 G. KAVULICH
 1 communications, e-mail, meet with clients,
 2 debtors, courts.
 3 Q. Any other major activities that
 4 you do?
 5 A. **That pretty much covers it.**
 6 Q. Do you know approximately on
 7 average what percentage of your time you
 8 spend going to court?
 9 A. **Now, 10 percent a year.**
 10 Q. Now, you go about 10 percent of
 11 your time a week, on average, you go to
 12 court; correct?
 13 A. **Yes.**
 14 Q. And a year ago you were going
 15 approximately how many times per week,
 16 would you go to court?
 17 A. **About a year ago about 25**
 18 **percent. Two years before that it was 40**
 19 **percent. It has been decreasing since the**
 20 **last five years.**
 21 Q. Why is that?
 22 A. **Because court is not an**
 23 **efficient use of my time or anyone else's.**
 24 Q. So going back to 2015, you said

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1 G. KAVULICH
 2 you spent about 25 percent of your time in
 3 court?
 4 **A. About 25.**
 5 **Q. Now, opening cases, what do you**
 6 **mean by opening cases?**
 7 **A. Client sends in a case or we go**
 8 **and pick up a case. I review the file. I**
 9 **enter the necessary information into our**
 10 **system and calendar it ahead accordingly.**
 11 **Q. What percentage of your week do**
 12 **you spend doing that?**
 13 **A. Fifteen percent maybe.**
 14 **Q. Is that true in 2015?**
 15 **A. Yes.**
 16 **Q. You said you search for new**
 17 **addresses; correct?**
 18 **A. Yes.**
 19 **Q. Approximately what percentage**
 20 **of your time do you spend doing that?**
 21 **A. That's included in opening**
 22 **cases.**
 23 **Q. You do intra office meetings,**
 24 **generally what does that entail?**
 25 **A. I would speak to the staff**

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1 G. KAVULICH
 2 doing that?
 3 **A. When?**
 4 **Q. Now.**
 5 **A. Ten percent.**
 6 **Q. What that true in 2015?**
 7 **A. Yes.**
 8 **Q. In 2008, was that roughly true?**
 9 **A. It was a lot more. I can't**
 10 **quantify it, but it was a lot more.**
 11 **Q. You said you review lists, what**
 12 **do you mean by that?**
 13 **A. Review the ticklers.**
 14 **Q. That is the computer pop-up**
 15 **that happens on a regular basis, for**
 16 **example, to collect on judgements?**
 17 **A. That is one example, yes.**
 18 **Q. What are other examples?**
 19 **A. If a summons and complaint is**
 20 **due to be issued.**
 21 **Q. When is that tickler sent out?**
 22 **A. Forty days after we issue the**
 23 **demand notice.**
 24 **Q. What other major lists do you**
 25 **review?**

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 1 G. KAVULICH
 2 **members about what they are doing and**
 3 **address the issues relevant to their job**
 4 **tasks.**
 5 **Q. Approximately what percentage**
 6 **of your week do you spend doing that?**
 7 **A. Probably 10 or 15 percent.**
 8 **Q. Was that true in 2015?**
 9 **A. Maybe 10 percent. We were a**
 10 **little bit busier.**
 11 **Q. You will find out later in the**
 12 **deposition about why I am asking this**
 13 **question but around 2008, about what**
 14 **percentage of your time was used on**
 15 **intra-office meetings?**
 16 **A. Probably the same. I don't**
 17 **know. It is eight years ago.**
 18 **Q. I am trying to get a rough**
 19 **estimate. You said going to court was**
 20 **greater before back in 2008. About what**
 21 **percentage of your time were you spending**
 22 **then?**
 23 **A. Fifty percent.**
 24 **Q. Going to client meetings, about**
 25 **what percentage of your time did you spend**

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 1 G. KAVULICH
 2 **A. If a notice of trial is due.**
 3 **There are not that many. There are not**
 4 **that many job tasks. I should not say job**
 5 **tasks. There are not that many categories.**
 6 **Review a file to see if or to look for a**
 7 **new address. If a summons is due, if a**
 8 **judgment is due, if we you execute on a**
 9 **judgment, if a motion is due, and then a**
 10 **notice of issue or a notice of trial.**
 11 **Q. So approximately what**
 12 **percentage of your week is spend doing that**
 13 **now?**
 14 **A. Ten or 15 percent.**
 15 **Q. Was that true in 2015?**
 16 **A. Most likely, yes.**
 17 **Q. Is that true in 2008?**
 18 **A. Yes, probably.**
 19 **Q. Troubleshoot problems,**
 20 **approximately how much time do you spend a**
 21 **week doing that?**
 22 **A. Twenty-five percent.**
 23 **Q. Is that true in 2015**
 24 **approximately?**
 25 **A. Probably.**

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1 G. KAVULICH
 2 Q. Approximately speaking, would
 3 that be true in 2008?
 4 A. You know, I can't tell you.
 5 Q. You said responding to
 6 communications e-mails and so forth from
 7 consumers and clients, approximately what
 8 percentage of your time per week do you
 9 spend doing that?
 10 A. Ten or 15. Maybe it is a
 11 little bit more.
 12 Q. Was that true in 2015, roughly
 13 speaking?
 14 A. Most likely, yes.
 15 Q. And roughly speaking, is that
 16 true in 2008?
 17 A. 2008 is a blur. I had just
 18 opened up my own office in 2007. Shortly
 19 thereafter I was sued by my old firm, even
 20 though I didn't do anything wrong. I was
 21 going through a divorce. It was a crazy
 22 time.
 23 Q. So you were just getting
 24 everything set up back in 2007?
 25 A. Yes.

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1 G. KAVULICH
 2 other words, client A, if they had started
 3 a case with Gutman Mintz, they stayed with
 4 Gutman Mintz. Any new cases that client A
 5 would place, they would place it with me.
 6 No monies changed hands. That is how it
 7 was resolved.
 8 Q. About how many accounts or
 9 cases came with you then from Gutman Mintz?
 10 MR. PASHKIN: Objection to
 11 relevancy.
 12 A. Came from Guttman?
 13 Q. Yes.
 14 A. I don't know if any. I a
 15 handful.
 16 Q. But some of the clients came
 17 over with you?
 18 A. Yes.
 19 Q. Those clients, about how many
 20 cases did you do with them after they came
 21 to you?
 22 MR. PASHKIN: Objection to
 23 relevancy.
 24 Q. Were they the major source of
 25 your cases?

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 1 G. KAVULICH
 2 Q. We don't need to go into
 3 details. I think you testified before your
 4 old firm was Gutman & Mintz?
 5 A. Yes.
 6 Q. They were trying to send a shot
 7 across the bow so other attorneys would not
 8 leave?
 9 A. As well as punishing me.
 10 Q. And so you wouldn't take away
 11 clients?
 12 MR. PASHKIN: Objection to
 13 relevancy.
 14 A. I am sure that was part of it.
 15 Q. Any other reasons?
 16 MR. PASHKIN: Objection to
 17 relevance.
 18 A. No.
 19 Q. What happened was that suit?
 20 A. The clients that decided to
 21 come with me, came with me. The bigger
 22 issue for me at the time was whether those
 23 client's cases that had already been placed
 24 with Gutman Mintz, whether or not they came
 25 with me or not and they did not. So, in

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 1 G. KAVULICH
 2 MR. PASHKIN: Objection.
 3 A. No.
 4 Q. Of your week you did doing
 5 various tasks signing all of the documents
 6 that we talked about, post-judgment
 7 enforcement mechanisms demand letters, 5222
 8 notices, the information subpoenas, wage
 9 garnishments, and all the other things we
 10 talked about, so would those, they give
 11 those to you in a stack and you go through
 12 them one at a time, you start signing them?
 13 A. Say that again. My office is
 14 down. That is taking a little bit of my
 15 attention away.
 16 Q. All those documents you signed,
 17 they give them in a stack to you and you
 18 just sign them one at a time?
 19 A. Yes.
 20 Q. Roughly speaking, you spend
 21 about an hour a week signing all those
 22 things or how long?
 23 A. I don't know how much time it
 24 is. I don't time it.
 25 Q. Generally speaking do you

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1	G. KAVULICH
2	review any of the information of the
3	documents you sign or pretty much just sign
4	what is in front of you generally?
5	A. Generally speaking, I sign what
6	is in front of me.
7	MR. KESHAVARZ: Let's take a
8	break now.
9	(Whereupon, a short recess was
10	taken.)
11	Q. Going back to Exhibit 1, the
12	information subpoena and bank restraint.
13	The amounts that are claimed that are due
14	are spit out by your computer; is that
15	right?
16	A. Correct.
17	Q. I want to ask you about, where
18	it says on the bottom of the first
19	paragraph, I take that back, if you look at
20	Exhibit 2, the execution with notice to
21	garnishee, what is an execution to
22	garnishee?
23	A. That is what we sent to the
24	marshal.
25	Q. The marshal forwards that to

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1	G. KAVULICH
2	A. Correct.
3	Q. Exhibit 2, if you look at it
4	that was created by your office; correct?
5	A. Yes.
6	Q. If you look underneath the
7	addresses, where it says whose last known
8	address is, and it has the address, do you
9	see that?
10	A. Yes.
11	Q. And beneath that it says, in
12	the amount of, that is the amount due on
13	the judgment?
14	A. Not according to this.
15	Q. In what way?
16	A. It says zero is due.
17	Q. It says in that sentence, read
18	that sentence.
19	A. In the amount of \$4,352.74
20	including costs of which zero dollars
21	interest thereon from March 13, 2008
22	remains due and unpaid. So it says zero is
23	due on it.
24	Q. It says zero is due or zero
25	interest is due?

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1	G. KAVULICH
2	the judgement debtor; correct?
3	A. To judgment debtor and I
4	believe the garnishee.
5	Q. Because the marshal is required
6	to do that under the CPLR; correct?
7	A. Correct.
8	Q. When you sign Exhibit 2 you
9	intend that the marshal forward Exhibit 2
10	to Mr. Morales; correct?
11	A. Yes.
12	Q. Exhibit 1, does that get
13	forwarded to the consumer?
14	A. Yes, I believe it does, yes.
15	Q. Does it get forwarded by the
16	marshal to the consumer?
17	A. By the bank.
18	Q. Because the bank is required to
19	send a copy of the information subpoena
20	with restraint notice to the consumer?
21	A. Yes.
22	Q. So when you signed Exhibit 1,
23	you knew and intended that Exhibit 1 would
24	be forwarded to the consumer by the bank;
25	correct?

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1	G. KAVULICH
2	A. It says zero, if you read the
3	whole sentence remains due and unpaid and
4	the last number is zero in that line.
5	Q. Well, let's move up because it
6	says in the amount of, that is continuing a
7	few lines up, where it says who are all of
8	the parties named in said action judgment,
9	was entered on March 13, 2008. Then skip
10	down to in the amount of, is that supposed
11	to be all part of the same sentence?
12	A. Yes.
13	Q. In essence what this is saying
14	is there was a judgment entered on March
15	13, 2008, in the amount of \$4,352.74?
16	A. Correct.
17	Q. Including costs; correct?
18	A. Correct.
19	Q. Well, when you read the
20	sentence --
21	A. It is a computer error.
22	Something got screwed up.
23	Q. Exhibit 2 is a form generated
24	by your office; correct?
25	A. Correct.

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	G. KAVULICH		G. KAVULICH
1	Q. You set up the template for it?	2	Q. So if you are saying Exhibit 2
2	A. Correct.	3	has an error in the text, the format of the
3	Q. Computer just fills in all of	4	text, and that is true for 2014 to present;
4	the numbers and the names; correct?	5	correct?
6	A. Fills in the variable fields	6	A. I don't know that for sure. I
7	names of the parties, et cetera, yes.	7	know on this one it is an error.
8	Q. Index number, so forth?	8	Q. Did you change your template
9	A. Correct.	9	for the execution?
10	Q. But the template of the text,	10	A. No.
11	other than the specifics of the consumer,	11	Q. So the error in the text here,
12	that text is established by your office;	12	would be an error in the text for
13	correct?	13	everything for 2014 forward?
14	A. Yes.	14	A. That is a reasonable assumption
15	Q. Are you saying there is some	15	but an assumption.
16	error in how the text is set up for Exhibit	16	Q. Just to be clear, because we
17	2?	17	talked about data fields, what specifically
18	A. It is definitely inartfully	18	in the template of the text, not the
19	written.	19	variables of Mr. Morales, is incorrect or
20	Q. In what way?	20	inartful?
21	A. It should say something of the	21	A. I just told you.
22	sort in amount of four thousand, a	22	Q. That it should say the
23	judgement amount including costs and	23	judgement was entered on a certain date and
24	interest of which blank dollars, and fill	24	the next line should be in the amount of;
25	in the blank, remains due and unpaid.	25	correct?
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1	G. KAVULICH	1	G. KAVULICH
2	Q. Looking at the execution with	2	A. Yes.
3	notice to garnishee, how much, in reading	3	Q. So, in that sentence it says
4	this document, what do you believe this	4	zero dollars interest thereon, so are you
5	document says as to how much is due?	5	saying zero dollars interest, does that
6	A. Zero.	6	mean how much interest is occurring?
7	Q. If the amount of zero was due,	7	A. What is the question? I am
8	why did you sign and send it for execution?	8	saying what?
9	A. I made a mistake.	9	Q. Let me rephrase the question.
10	Q. Why?	10	A. I told you already what I said,
11	A. I don't know why. I don't	11	what I believe this says. I also told you
12	remember from May or April of 2015.	12	what I believe that it should say. I don't
13	Q. Is the template that is Exhibit	13	know what more or less I could add to that.
14	2 the same template you use today?	14	Q. Let me be more specific right
15	A. I believe so.	15	now. When it says of which zero dollars
16	Q. This is a template you have	16	interest thereon from a certain date, where
17	used for many years?	17	it says zero dollars interest, that means
18	A. Since 2014.	18	there is zero dollars interest accruing;
19	Q. So if you believe there is	19	correct?
20	something wrong with the text of the form	20	A. The way it is written, yes.
21	that has been in error for all the	21	Q. So the way it is written, it is
22	executions with notice to garnishee from	22	saying there is an amount due of \$4,300 but
23	2014 to present; correct?	23	there is no interest accruing on it?
24	A. I didn't hear a question in	24	A. No, and I answered that
25	there.	25	question already.
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1	G. KAVULICH	1	G. KAVULICH
2	Q. Where it says in the amount of	2	that belongs before that zero, but that's
3	\$4,300, what about that is unclear?	3	the way I read it, and you may disagree
4	A. I told you already.	4	with me, but that's the way I read it.
5	MR. PASHKIN: Asked and	5	Q. The clause "interest thereon"
6	answered. We keep going around in	6	should be moved to where?
7	circles. You are asking him to	7	A. After including costs, with
8	interpret a document. He has given	8	interest thereon.
9	you his interpretation. The document	9	Q. What about the phrase of which,
10	says what it says.	10	does that get deleted?
11	Q. I am trying to narrow down a	11	A. That would be after. Interest
12	specific phrase one at a time.	12	thereon from the date, the entry date is a
13	A. I have already done that.	13	clause which should be after the word
14	Q. I am not sure you have. Let's	14	"costs." That after which should follow of
15	do it and get it out of the way?	15	which X amount of dollars remains due and
16	A. Let's move on to something	16	unpaid. This clause simply has to go after
17	else. I have acknowledged this is wrong.	17	costs the way it is presently constructed.
18	I have acknowledged it was inartful. I	18	Q. Are you saying that the
19	told you what it should be. And I told you	19	template that has these phrases, that
20	what it says.	20	template should be rearranged?
21	Q. Let's break down a specific	21	A. I am saying, yes. I said that
22	phrase, where it says there was a judgment	22	already.
23	entered on the date in the amount of	23	Q. You clarified it. Thank you.
24	\$4,300?	24	Since this FDCPA action has been filed,
25	A. You asked that already, and I	25	have you changed the template that is in
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	101		103
1	G. KAVULICH	1	G. KAVULICH
2	acknowledged that.	2	Exhibit 2?
3	Q. When it says in the amount of	3	A. No, but I will today or
4	\$4,300, this is stating the judgement was	4	tomorrow when I get back. That being said,
5	\$4,300; is that correct?	5	I don't know about the other ones, this
6	A. Correct.	6	could be, this is a form but forms get
7	Q. Then it says zero dollars in	7	screwed up sometimes too.
8	interest; correct?	8	Q. But the data inputs I am more
9	A. It says zero dollars interest	9	interested in. So you are saying on the
10	thereon from March 13, 2008.	10	date of the signature here April 27, 2015
11	Q. Then it says remains due;	11	there was zero dollars remaining on the
12	correct?	12	judgement; correct?
13	A. And unpaid, correct.	13	A. That is the way I read this.
14	Q. So why does that not mean there	14	Q. But putting aside how you read
15	is an amount of \$4,300 due, no interest and	15	it, let me ask you a factual question, is
16	that amount remains due and unpaid?	16	it the position of your firm and yourself
17	A. That is not the way I read it.	17	as of April 27, 2015, the judgment was
18	I don't know how many ways you want me to	18	entirely satisfied, is that what you are
19	say it. I read it and I am acknowledging	19	saying?
20	it was a mistake. So I don't know really	20	A. No. I am saying there wasn't a
21	what, I mean we can move on to more	21	judgement against Mr. Morales.
22	productive things. Forty-three hundred and	22	Q. You're saying it was a judgment
23	change is the judgement amount, of which	23	against Clara Potter, not Mr. Morales?
24	zero remains due and unpaid. The interest	24	A. In addition to there not being
25	thereon from March 13, 2008 is a clause	25	a judgment against Mr. Morales. There was
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	101		103

1 G. KAVULICH
 2 a judgement against Clara Potter.
 3 Q. Was the judgment against Clara
 4 Potter due in the amount of \$4,352.74 when
 5 you signed this document on or about April
 6 27, 2015?
 7 A. It was some number less than
 8 that because there were payments from an
 9 income execution, the exact amount of which
 10 I don't know.
 11 Q. Was the number zero?
 12 A. No.
 13 Q. How do you know that?
 14 A. From my recollection.
 15 MR. KESHAVARZ: Mark this as
 16 Plaintiff's 4.
 17 (Whereupon, the aforementioned
 18 document was marked as Plaintiff's
 19 Exhibit 4 for identification as of
 20 this date by the Reporter.)
 21 Q. I am showing you what has been
 22 marked as Plaintiff's 4 and Bates stamped
 23 Kavulich parenthesis Morales, 1 through 3
 24 from your attorney's office. Can you
 25 identify what Exhibit 4?

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1 G. KAVULICH
 2 the statute of limitations on contracts in
 3 New York State and Mr. Morales' statement
 4 he signed the lease, it would be six years
 5 from when the debt started accruing.
 6 Q. When was that date for Morales?
 7 A. I don't remember. Obviously,
 8 some time before May of 2008.

9 Q. The statute of limitations
 10 began.
 11 A. The statute of limitations
 12 began running sometime before May of 2008.

13 Q. Does Exhibit 1 indicate,
 14 provide information to you to determine
 15 when the statute of limitations expired for
 16 the alleged debt from Mr. Morales to
 17 Rosewall?

18 A. Exhibit 1 is not informative as
 19 to that.

20 Q. Exhibit 4?
 21 A. It gives me a range, yes.
 22 Q. What is that range?
 23 A. Sometime after October of 2007.
 24 Q. Sometime after October of 2007,
 25 six years the statute of limitations began

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 1 G. KAVULICH
 2 A. This is our snapshot.
 3 Q. It is the collection notes on
 4 the punitive judgement account; correct?
 5 A. Say that again.
 6 Q. Let me rephrase that. Is it
 7 your position you and your firm that Mr.
 8 Morales owes any amount to Rosewall?
 9 A. Mr. Morales owes any money to
 10 Rosewall. He did but he does not now
 11 because of the statute of limitations. He
 12 owed money. It wasn't in a judgment form.
 13 But he owed money. Because it was in a
 14 judgment form, we did not sue him civilly,
 15 to my recollection. And because it was
 16 determined subsequently to the expiration
 17 of statute of limitations, he didn't owe
 18 the money. It is not because there was not
 19 an original debt.

20 Q. What is your position about the
 21 date the statute of limitations ran as to
 22 the punitive debt by Mr. Morales to
 23 Rosewall?

24 A. From my recollection, it was,
 25 from my recollection in this case, to both

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 1 G. KAVULICH
 2 to start?
 3 A. Correct, began to run, yes.
 4 Q. Do you or your firm have a
 5 document in your possession that would
 6 indicate to your firm the date that the
 7 statute of limitation would begin and would
 8 expire?

9 A. More exactly, yes.
 10 Q. What document would have that?
 11 A. The lease and the breakdown.
 12 Q. The breakdown of what?
 13 A. Of the arrears.
 14 Q. That breakdown of the arrears
 15 is provided to your office by Rosewall;
 16 correct?

17 A. Yes.
 18 Q. Now, there are some prior
 19 depositions you were not here for by
 20 Rosewall's corporate representative. Is it
 21 your understanding that all of the
 22 communications on behalf of Rosewall go
 23 through a property management company?

24 A. I can't account for all
 25 corporate communications.

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1 G. KAVULICH
 2 Q. All your communications with
 3 Rosewall go through a property management
 4 company?
 5 A. As far as us, yes.
 6 Q. To your knowledge, you don't
 7 know anyone at Rosewall Gardens?
 8 A. Correct.
 9 Q. When you collect on debts that
 10 are not a judgment, when you do that, you
 11 send out collection letters; correct?
 12 A. Yes.
 13 Q. What other ways do you do that?
 14 MR. PASHKIN: Objection to
 15 relevance.
 16 A. We send a letter. If we, in
 17 fact, have a good address for service, we
 18 commence a lawsuit.
 19 Q. Now looking at Exhibit 1 going
 20 from the bottom, when was the accounts for
 21 Miss Potter and Mr. Morales given to you by
 22 Rosewall?
 23 A. I have to see Exhibit 4. In or
 24 around March of 2008.
 25 Q. You believe that because the

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 1 G. KAVULICH
 2 third page of your document production says
 3 that?
 4 A. Yes.
 5 Q. You are looking at the bottom
 6 line?
 7 A. Yes.
 8 Q. An entry of March 13, 2008?
 9 A. Yes.
 10 Q. Where it says prior judgement
 11 for \$300, that is something your staff puts
 12 in your computer system based on the
 13 documents provided to your office by
 14 Rosewall?
 15 A. Yes.
 16 Q. In the prior deposition, I
 17 think you testified when you worked at
 18 Guttman & Mintz you primarily did
 19 landlord-tenant lawsuits, correct?
 20 A. When I worked for Gutman Mintz
 21 I wore a number of different hats.
 22 Q. Was there a primary litigation
 23 purpose?
 24 A. The firm's primary practice was
 25 landlord-tenant.

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1 G. KAVULICH
 2 Q. That was primarily what you did
 3 there?
 4 A. And collections, yes.
 5 Q. How do you distinguish
 6 collections from landlord-tenant?
 7 A. In my world collections are
 8 post tenancy. Landlord-tenant would be
 9 while the person is actually a tenant.
 10 Q. When you file landlord-tenant
 11 action, you are trying to evict the tenants
 12 from the property; correct?
 13 A. No. We are trying to collect
 14 rent money.
 15 Q. You file a landlord-tenant
 16 action to collect rent money?
 17 A. That is the hope.
 18 Q. Are you also trying to get
 19 judgement of possession of the property?
 20 A. In the absence of payment, yes.
 21 Q. What is a judgment of
 22 possession?
 23 A. It is a judgement which allow
 24 the property owner to, along with other
 25 things, regain possession of the space.

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 1 G. KAVULICH
 2 Q. When you say regain possession,
 3 do you mean evict tenant that is there or
 4 what do you mean by that?
 5 A. That is one of the measures
 6 that a landlord could take, yes, based on
 7 that judgement of possession.
 8 Q. Is that the primary purpose of
 9 getting a judgement of possession?
 10 A. The primary purpose is a step
 11 in the procedure.
 12 Q. In order to force a tenant out
 13 of a property, you have to get a judgement
 14 of possession?
 15 A. Among other things but, you,
 16 that is the primary step.
 17 Q. So it is common to file a
 18 landlord-tenant action against more than
 19 one individual; correct?
 20 A. That is my secondhand
 21 experience. I never filed a
 22 landlord-tenant action.
 23 Q. When you said you did
 24 landlord-tenant work, what did you mean?
 25 A. I would go to court and write

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1 G. KAVULICH
 2 stipulations.
 3 Q. So Gutman Mintz, the firm you
 4 worked for at the time, would file
 5 landlord-tenant lawsuits; correct?
 6 A. Yes.
 7 Q. You were one of the attorneys
 8 at Gutman Mintz; correct?
 9 A. Yes.
 10 Q. You would go to court because
 11 of the lawsuits, landlord-tenant lawsuits
 12 your firm filed?
 13 A. Yes.
 14 Q. So you were involved in the
 15 landlord-tenant lawsuits that Gutman Mintz
 16 filed?
 17 A. Yes, to the extent of, all I
 18 did, I would not even know how to file a
 19 notice of petition, all I did was go to
 20 court and write a stipulation or argue a
 21 motion. I never did trials.
 22 Q. By stipulation, what do you
 23 mean?
 24 A. Payment agreements between the
 25 parties.

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1 G. KAVULICH
 2 Q. Back in 2008, when this account
 3 was given to you by Rosewall, your firm did
 4 not charge to see if there was a money
 5 judgment entered against all of the
 6 defendants; is that true?
 7 A. No, my recollection is that the
 8 woman who entered, the person who entered
 9 the case believed there was a judgement
 10 against both.
 11 Q. Well, let me ask you this if
 12 you know, back in March of 2008 when you
 13 got the account for collections from
 14 Rosewall, was it your office's procedure to
 15 check to see if there was a money judgement
 16 against all of the defendants in the
 17 landlord-tenant action?
 18 A. Yes.
 19 Q. In 2008, you knew, you and your
 20 firm knew that you would only get a money
 21 judgment against consumer in a
 22 landlord-tenant action if that consumer
 23 actually appeared in court; correct?
 24 A. No. First of all, I knew that.
 25 The woman who entered the cases knew that.

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 1 G. KAVULICH
 2 Q. If there is a landlord-tenant
 3 suit against multiple tenants or multiple
 4 defendants, is it true you can only get a
 5 money judgement if that tenant appears on
 6 the court date; is that true?
 7 A. Nowadays that's true.
 8 Q. Is that true as of 2008?
 9 A. I can't give you an exact
 10 delineation of the time. But I know years
 11 ago that that was not the case. Now it is
 12 where if you have two tenants, two
 13 lease-holders, you are absolutely correct,
 14 both tenants have to appear in court. But
 15 going back, I don't remember exactly what
 16 years but even after this lawsuit, I
 17 remember there being cases where it would
 18 turn out later, I would get a housing court
 19 judgement from a client or we pull it from
 20 the file or whatever, and both names would
 21 be on it but after engaging in litigation
 22 and court appearance and find out only one
 23 of those tenants showed up, yes, the clerk
 24 entered a judgement again both, a money
 25 judgment against both of them.

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 1 G. KAVULICH
 2 That is one of the reasons we hired her,
 3 she had experience on the landlord-tenant
 4 side. But back then in 2008, it surely
 5 wasn't my understanding that both parties
 6 had to appear in order for there to be a
 7 judgment, a money judgment in a
 8 landlord-tenant action, because that wasn't
 9 my experience. That has unfolded and been
 10 a court practice later. That being said, a
 11 case can be given to us by a client with
 12 two people on the lease and one person may
 13 leave or somehow remove him or herself from
 14 the landlord-tenant relationship. So we
 15 still review the file to make sure that
 16 both people are actual debtors.
 17 Q. When you said the person who
 18 enters the information into your computer
 19 system, do your records indicate who that
 20 was for the Rosewall file regarding Miss
 21 Potter or Mr. Morales that you got in March
 22 of 2008?
 23 A. My records don't necessarily
 24 show that definitively. But I know who it
 25 was. I forget her last name. Mercedes.

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	G. KAVULICH		G. KAVULICH
1	We hired her about January or February of	2	about, until I hired her, I used to enter
2	that year.	3	the cases. And I just decided we were very
3		4	busy and people's responsibilities were
4	Q. January or February of 2008?	5	stretched.
5	A. Yes.	6	Q. What qualifications did
6	Q. Is this from the prior	7	Mercedes have when she began to work for
7	deposition, they are sisters that worked	8	you?
8	there?	9	A. She was the legal point person
9	A. No.	10	for a large housing company.
10	Q. That a different person?	11	Q. Which one?
11	A. Those are different people.	12	A. Sepco Development in the Bronx.
12	Q. You said Mercedes started	13	Q. Is that a property management
13	working for your firm in January or	14	company?
14	February of 2008?	15	A. Yes.
15	A. Yes.	16	Q. Do you know how long she worked
16	Q. When did she cease working for	17	there before you hired her?
17	your firm?	18	A. I don't know exactly, but for a
18	A. March or April or May of 2011.	19	long time.
19	Q. What were her primary	20	Q. Do you know about how old she
20	responsibilities when she worked for you?	21	was when she started working for you? Was
21	A. Her primary, first and foremost	22	she out of high school, in her 20s or 40s?
22	responsibility was entering the cases.	23	A. I know she had at the time a
23	Q. What do you mean by entering	24	high school age daughter.
24	the cases?	25	Q. Do you know if she graduated
25	A. I would get the file from the		DIAMOND REPORTING (877) 624-3287 info@diamondreporting.com
	DIAMOND REPORTING (877) 624-3287 info@diamondreporting.com	116	118
1	G. KAVULICH	1	G. KAVULICH
2	client or some other way in the mail or	2	from high school?
3	however it would come to me. Then I would	3	A. Do I know whether she graduated
4	give it to her to enter the name of the	4	from high school? No.
5	parties and how much was owed.	5	Q. What training did Mercedes have
6	Q. So she would be the person who	6	to determine whether a case should be
7	would determine whether it was a debt for	7	entered for collection and rent as opposed
8	rent that you had to file a civil suit for,	8	to enforcement of the judgement?
9	as opposed to judgment enforcement?	9	A. Years.
10	A. Generally, yes.	10	Q. What experience?
11	Q. She would make that decision?	11	A. Years, this housing company, I
12	A. Yes.	12	don't know then it might have been
13	Q. You would not tell her which	13	twenty-five hundred, but somewhere between
14	one it is?	14	twenty-five hundred and three thousand
15	A. No, especially me at this time.	15	apartments were under their management. It
16	Q. Why do you say that?	16	is Father Gigante in the Bronx. He worked
17	A. Because I was only open less	17	there for many years, and she was their
18	than a year and I was trying to build a	18	liaison with their landlord-tenant counsel.
19	business and I was wearing many more hats	19	She would put cases into legal follow-up
20	than I do now.	20	and deal with all the legal aspects of the
21	Q. Would it be fair to say when	21	case.
22	you first opened your practice in 2008,	22	Q. Is she an attorney?
23	your office was just starting up and was in	23	A. No.
24	a jumble?	24	Q. Did she have any formal
25	A. No. I am saying up until	25	training or legal training?
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1	G. KAVULICH	1	G. KAVULICH
2	A. I don't know.	2	aren't really relevant to collection
3	Q. Did she have any legal	3	actions to the extent that the collection
4	training?	4	actions that we engage in and engaged in
5	A. I don't know. What do you mean	5	2008 were all post possession cases,
6	by legal training?	6	meaning that the tenants/debtors/defendants
7	Q. I don't know. Was she doing	7	were no longer residents in those
8	the activities of an attorney?	8	apartments.
9	A. No, she would not make court	9	Q. And that could only happen if
10	appearance or sign papers.	10	you have a possessory judgement?
11	Q. She would make decisions about	11	A. Unless they left voluntarily,
12	what an attorney would make decisions on	12	you cannot evict someone without a
13	about whether or not to file a collection	13	possessory judgment, yes.
14	lawsuit or expedite judgment?	14	Q. You are saying all the cases
15	A. She would determine whether a	15	you got at that point the tenant had
16	judgement exists or not, yes.	16	already moved out?
17	Q. But you didn't direct her to	17	A. Either moved out or was
18	determine whether there was a possessory	18	evicted, yes.
19	order or a money judgement in a	19	Q. So when you got an account that
20	landlord-tenant action; is that correct?	20	was after landlord-tenant action was
21	A. Possessory orders were	21	completed, you would not take any steps to
22	generally, actually I can't right now, I	22	determine whether there was only a
23	will reserve the possibility were relevant	23	possessory judgement or if there was also a
24	to what we did or what we do because all	24	money judgment; is that true?
25	our cases were after folks moved out or	25	A. The inquiry, again, I will
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	121	123	
1	G. KAVULICH	1	G. KAVULICH
2	were evicted.	2	reserve for a metaphysical possibility, but
3	Q. Let me make sure I understand.	3	I cannot imagine where a possessory
4	A landlord-tenant action would be filed and	4	judgment would be relevant. We would look
5	one reason would be to collect rent;	5	to see if there was a money judgement, but
6	correct?	6	not a possessory judgement.
7	A. Yes.	7	Q. But it is not uncommon; correct
8	Q. And another reason would be to	8	me if I am wrong, it is not uncommon for a
9	get a possessory judgement so that you	9	multiple defendant landlord-tenant action
10	could begin the process of evicting that	10	to have a money judgment against one of the
11	tenant from the property; correct?	11	tenants and not a money against the other
12	A. Yes, but to make clear, my firm	12	tenant, because the other tenant didn't
13	nor I do this work, nor did we do this work	13	show up in court?
14	in 2008.	14	A. Now that is common.
15	Q. You didn't do landlord-tenant	15	Q. In 2008 was that common?
16	work?	16	A. To my knowledge, no, because
17	A. Correct.	17	they, whatever or whenever the exact
18	Q. At Gutman Mintz you appeared at	18	delineation was, I don't know whether they
19	hearing on landlord-tenant cases filed by	19	changed the law or maybe now they started
20	Gutman Mintz; correct?	20	paying attention, I am speaking about the
21	A. Yes.	21	clerks in the court, now they started
22	Q. You are saying you don't know	22	paying attention to it. Because back then
23	so --	23	you could have a money judgment against two
24	A. My simple point is possessory	24	tenants although only one appeared, a money
25	judgments don't come into collections,	25	judgement. Now that, I haven't seen that
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1	G. KAVULICH
2	in a few years.
3	Q. Let me ask you this: When you
4	got the account for Miss Potter and Mr.
5	Morales since it was after a
6	landlord-tenant action, did your firm
7	assume that there was a judgement against
8	both of the debtors?
9	A. No, we would not assume, no.
10	Q. You would check to see if there
11	was an actual judgment against each of
12	them?
13	A. Correct.
14	Q. Would you request, obtain a
15	copy of the physical judgement against each
16	of the debtors, would you request that from
17	your client when you got the account?
18	A. This particular client it would
19	be in there or there would be a notation in
20	there that there was.
21	Q. My question is more general.
22	Do you insist on seeing a copy of the money
23	judgement against each of the defendants
24	when you get a case post landlord-tenant?
25	A. Yes, we want to see it, sure.

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1	G. KAVULICH
2	Q. But based on your own office's
3	records in this case, is there any evidence
4	that your office had possession of the
5	judgements in the landlord-tenant case
6	against Miss Potter or Mr. Morales, either
7	possessory judgement or money judgement?
8	A. I just told you usually we
9	require, if the client does not provide it
10	to us, we look for it in court. What I
11	believe, I just answered this, but what I
12	believe happened is she misread what we
13	had. Do I know for sure? No.
14	Q. You would generally have
15	someone from your office check the court's
16	website or would you have your staff go to
17	the physical courthouse and check the
18	computers there?
19	A. E-courts is useless. E-courts
20	isn't applicable when it is a housing court
21	index number. Once the case is over you
22	can't find them. So we use to send a guy
23	down to various housing courts and look in
24	their housing court system computer.
25	Q. But your staff generally would

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1	125
2	G. KAVULICH
3	Q. Did you insist on getting a
4	physical copy of that money judgment prior
5	to you attempting to collect on the debt?
6	A. I assuming, first of all, I
7	don't remember 2008. I am assuming
8	Mercedes would have reached out or looked
9	at whatever was there, if she thought there
10	was one there.
11	Q. My question is broader: Did
12	your office require the client to provide
13	you a copy of a money judgement for
14	accounts that were given to you after a
15	landlord-tenant action?
16	A. No, because sometimes we would
17	go look. If the information wasn't in the
18	file, we would send someone to housing
19	court and check in the housing court
20	computer.
21	Q. Would the housing court, do you
22	know if that happened in this case?
23	A. I don't think so. I believe
24	what happened, I am not sure, but I believe
25	what happened was Mercedes just misread the

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1	127
2	G. KAVULICH
3	not pull the actual file, they would look
4	at what the computer screen said?
5	A. When the files were available
6	they would get copies, sure.
7	Q. When was the landlord-tenant
8	action completed as to Miss Potter and Mr.
9	Morales?
10	A. In 2008, I believe.
11	Q. Why do you think that?
12	A. Because that's when they
13	vacated.
14	Q. That's when the vacated the
15	premises?
16	A. Yes.
17	Q. How do you know that?
18	A. By my notes, the system notes.
19	Q. Do you know when your office
20	obtained, if ever, a copy of the money
21	judgment against Miss Potter?
22	A. No.
23	Q. Is there anything in your
24	records that would indicate when that was
25	received?

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1	G. KAVULICH	1	G. KAVULICH
2	Q. The money judgment against Miss	2	it, but I subsequently found out that the
3	Potter?	3	guy that used to scan our stuff used to
4	A. Apparently when we opened the	4	intentionally scan, after I fired him, used
5	case, when the case was opened.	5	to intentionally scan one person's
6	Q. What makes you say that?	6	documents into another person's file. He
7	A. Because it says prior judgment.	7	is since dead. But I can't say nobody
8	Q. Where does it say that?	8	would take it out and intentionally destroy
9	A. Bottom of page three.	9	it. But that being said, who knows what
10	Q. On March 13, 2008; correct?	10	file it is in or if it is in a file or
11	A. Correct.	11	maybe it just fell out, sixty pages or a
12	Q. You don't know from that entry	12	hundred pages we took and we copied from
13	whether you had possession of the money	13	the client file and it got lost. But my
14	judgement against Miss Potter, do you know?	14	notes, my contemporaneous notes at the time
15	A. No, I do not know.	15	I picked up the file indicates that we did
16	Q. So there is no evidence in your	16	have it by handwriting saying FJ attached.
17	own records that indicate when, if ever,	17	FJ in my lingo means money judgment. I
18	you had a copy of the money judgment	18	have no need to know about a possessor
19	against Miss Potter; correct?	19	judgement for our purposes.
20	A. No, in the records there may be	20	Q. A final judgement attached to
21	but I don't have them all in front of me.	21	what?
22	Q. Well, I can show you the	22	A. To the rest of the documents.
23	documents. Is there anything in your	23	Q. There is that notation but you
24	documents production that show if your	24	don't have possession of the document?
25	office ever received the money judgment	25	A. It is not included in this pile
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	129		131
1	G. KAVULICH	1	G. KAVULICH
2	against Miss Potter?	2	of papers; correct.
3	A. Yes, it looks like when I	3	Q. Any documents regarding the
4	picked up the case there was one because it	4	account the judgement Miss Potter, Mr.
5	says "FJ attached."	5	Morales you would have provided in your
6	Q. FJ means?	6	possession, you would have provided to your
7	A. Final judgment.	7	attorney?
8	Q. Final judgment could be a	8	A. Yes.
9	possessory judgement?	9	Q. And your attorney would have
10	A. Not in my lingo. I don't see	10	provided them to my office in this case?
11	the judgement. I see the stipulation from	11	A. Yes, I believe that, yes.
12	the court, but I didn't see the judgement.	12	Q. To your knowledge, there isn't
13	Q. So you are saying your office	13	any documents being withheld?
14	never had possession of a money judgment	14	A. No, if I had it, I would show
15	against Miss Potter?	15	it to you.
16	A. No, now I am definitely not	16	Q. If you had a monetary judgement
17	saying that. Now, I am saying we did.	17	against Miss Potter in your custody and
18	Q. Correct me if I am wrong. Do	18	control, it would be in your document
19	you have a copy of the money judgment	19	production in this case?
20	against Miss Potter in your document	20	A. Correct.
21	production?	21	MR. KESHAVARZ: Please mark
22	A. In here, no, but we did at some	22	this as Plaintiff's 5 for
23	point. At least when we opened the case.	23	identification.
24	Q. Would it have been destroyed?	24	(Whereupon, the aforementioned
25	A. I can't say what happened to	25	document was marked as Plaintiff's
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1 G. KAVULICH
 2 Exhibit 5 for identification as of
 3 this date by the Reporter.)
 4 Q. I am showing you what has been
 5 marked as Plaintiff's 5. Can you identify
 6 what that document is?
 7 A. It is a summons, complaint.
 8 Q. Did your office file a summons
 9 and complaint against Miss Potter and Mr.
 10 Morales on or about July 1, 2008?
 11 A. It appears so.
 12 Q. It is a summons and complaint
 13 to collect on rent to be owed by them?
 14 A. Correct. Now it is kind of
 15 screwy, right? See, because we
 16 discontinued this -- I didn't remember
 17 this. After looking at this -- I don't
 18 remember, I don't remember actually which
 19 one, I saw it said something about a
 20 discontinuance or something. We should
 21 have kept this case going. We should have
 22 kept this case going against James Morales
 23 because he owed the money. But we
 24 discontinued it because of the judgment.
 25 We discontinued it because somebody said

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1 G. KAVULICH
 2 was not paid in full. I think it is not
 3 paid in full.
 4 Q. How much is left?
 5 A. I don't know; you have to ask
 6 the marshal.
 7 Q. You collect on a debt and you
 8 don't know how much is owed on that debt?
 9 A. No, you are mischaracterizing
 10 what I said. I said, like you mentioned
 11 before, I don't remember what we were
 12 referring to, but don't trust your math,
 13 was what you said. I am not good at math
 14 either. So I am not going to tell you they
 15 owe \$5,226.22 as of yesterday. I am saying
 16 that a non-math expert, fairly intelligent
 17 guy, not the brightest guy in the bunch,
 18 but fairly intelligent, can look at a
 19 judgment from 2007 that's been paid off
 20 slowly, that there is a good likelihood
 21 there is still interest owed, that is what
 22 I am saying.

23 Q. Let me ask you a specific
 24 question. You have in front of you all of
 25 your documents in your possession custody

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 1 G. KAVULICH
 2 there was a judgment against both people.
 3 We screwed ourselves and our client because
 4 your client got away with owing the money.
 5 Q. You collected the full amount
 6 of the money from Miss Potter?
 7 A. I don't think we collected the
 8 full amount. I guess we did ultimately.
 9 Q. You are looking at Plaintiff's
 10 2; correct?
 11 A. Yes.
 12 Q. You are looking at?
 13 A. I am looking at Plaintiff's 4.
 14 Q. What about Plaintiff's 4
 15 demonstrates to you that the full debt to
 16 Rosewall, by Miss Potter and/or Mr. Morales
 17 apparently was entirely satisfied?
 18 A. I don't know if it is entirely
 19 satisfied because I see the judgement is
 20 for \$4,352.74. So the amount collected
 21 \$4,505.47.
 22 Q. So you collected more than the
 23 amount of the judgement?
 24 A. I don't know that all of the
 25 interest that would have accrued on this

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 1 G. KAVULICH
 2 and control against Morales, Miss Potter,
 3 the accounts of the judgement, you have
 4 that in front of you right now; correct?
 5 A. Correct.
 6 Q. Is there anything in your
 7 records that indicates to you how much, if
 8 anything, is owed on the judgement?
 9 A. There is still interest owed.
 10 Can I tell you exactly how much? No, I
 11 can't. Once we do a property execution or
 12 an income execution we rely on the marshal
 13 to determine because poundage is also
 14 involved once an account goes to a marshal,
 15 and I rely on what their calculations are.

16 Q. I am not talking about
 17 poundage. I am talking about the interest.

18 A. But poundage affects the
 19 interest, poundage affects the debt; right.

20 Q. When you get an account to
 21 collect on a judgement, do you ever put on
 22 a document that is sent to a consumer what
 23 the current balance is on the judgement?

24 A. No. When we get the case, we
 25 say the judgement plus interest from when

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1 G. KAVULICH
 2 it was due.
 3 Q. You noted before that there is
 4 a tickler that comes up on all five
 5 thousand judgments your office has to
 6 determine what steps to take about
 7 executing on that judgment; correct?
 8 A. No, it just tells us that it is
 9 time to execute on the judgement.
 10 Q. So this pops up, and this
 11 non-attorney in Laos, Collin, now in Laos,
 12 looks at the screen and determines whether
 13 to issue a post-judgment enforcement
 14 mechanism; correct?
 15 A. Yes.
 16 Q. He determines that without
 17 noting what the balance is due on that
 18 account; correct?
 19 A. No, that is not true.
 20 Q. So this judgment account
 21 against Miss Potter pops up on your
 22 computer screen, is there any way to
 23 determine how much is due on the judgement,
 24 if any?
 25 A. If you sat down, did the

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 1 G. KAVULICH
 2 calculations but additionally we also know
 3 whether or not there is money due or not by
 4 how the marshal returns the file to us. If
 5 we were doing an income execution, for
 6 instance, the marshal gets the money from
 7 the employer, right or from the debtor, I
 8 guess, for the first stage and they will
 9 tell us whether or not it is satisfied.
 10 And sometimes it will come back that the
 11 person became separated from their
 12 employment and they could not pursue the
 13 garnishment anymore and they will say it is
 14 partially satisfied.

15 Q. Let me direct your attention to
 16 Exhibit 1, this is the information subpoena
 17 and a restraining notice, this document, if
 18 you can read from where it says at the
 19 bottom of the first paragraph where it says
 20 "in total?"

21 A. Before "in total?"

22 Q. From there to the end?

23 A. Unlike the property execution,
 24 I think that verbiage is more correct.

25 Q. Well, different.

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1 G. KAVULICH
 2 A. Well, hold on.
 3 Q. Let me look at it on my screen
 4 while you look at it on the document. Let
 5 me catch up with you, please. So look at
 6 Exhibit 1, the information subpoena and
 7 restraining notice issued by your office
 8 and signed on March 18, 2015. What does
 9 this document say the balance due on the
 10 judgment is?
 11 A. It says how much, it says
 12 \$4,352.74 together with interest thereon
 13 from the date of entry of the judgement,
 14 remains due and unpaid.
 15 Q. This is, in your view says that
 16 there's --
 17 A. That this was still \$4,352.74.
 18 Q. Left on the judgement?
 19 A. Correct.
 20 Q. That was not true?
 21 A. Correct.
 22 Q. Your office did not know what
 23 the current balance was actually due on
 24 March 18, 2015 when you signed this
 25 document?

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 1 G. KAVULICH
 2 A. They neglected to ask the
 3 marshal, yes.
 4 Q. They neglected to ask the
 5 marshal how much was due on the judgement?
 6 A. Correct because they had been
 7 collecting on the income execution on Miss
 8 Potter.
 9 Q. Well, sometimes your office
 10 uses more than one marshal to collect on a
 11 judgement; correct?
 12 A. If we did, it was a mistake.
 13 Because we are supposed to, and I can't
 14 point to, I can't think of any. But if we
 15 are using one marshal, if you have two
 16 debtors, you want to use the same marshal.
 17 Q. Why?
 18 A. So you can keep track of things
 19 like this.

20 Q. Does your office --

21 A. We would never purposely send a
 22 judgement, an execution, sorry, to a
 23 marshal, using this instance, purposely
 24 send an execution on James Morales to
 25 marshal A and send an execution on Miss

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1 G. KAVULICH
 2 Potter to marshal B, it does not make any
 3 sense.
 4 Q. Why would you not do that?
 5 A. Because they can keep track of
 6 the numbers.
 7 Q. If you were to send the account
 8 from Miss Potter to one marshal to collect
 9 and you sent the account to a different
 10 marshal to collect, the amounts each
 11 marshal thought were due on the judgment or
 12 the punitive judgment would be
 13 inconsistent; is that you are saying?
 14 A. I am saying there is a greater
 15 chance of that happening. No, I am not
 16 saying, again, the amount of the judgment
 17 goes down. Use this, for example, the
 18 amount of the judgment on Potter, the
 19 amount of monies received from Potter pays
 20 down the judgement. If there was a
 21 judgment against Mr. Morales and say we
 22 were garnishing him, it would be easier to
 23 keep track of that to have it with the same
 24 person.
 25 Q. Putting aside whether there was

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1 G. KAVULICH
 2 Bigel. Then I was afraid of having all my
 3 eggs in one basket. Not they did anything
 4 bad, they were very nice people. But by
 5 that time, I guess, my non-clinical
 6 paranoia had worn off and Ronnie was
 7 reaching out to me, he wanted work. I had
 8 a relationship with him. So he gets a
 9 small, he does not get at much as marshal
 10 Bigel.
 11 Q. When you say Ronnie?
 12 A. Ronald Moses.
 13 Q. When did you start using
 14 marshal Bigel?
 15 A. 2009 maybe or 2010. I don't
 16 remember exactly.
 17 Q. For a period of time you would
 18 use only marshal Bigel?
 19 A. Well, other than the cases that
 20 we had already placed with marshal
 21 Bienstock.
 22 Q. For what period of time did you
 23 use only marshal Bienstock?
 24 A. Well, from like 2007, the end
 25 of 2007 until probably 2009. We probably

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 1 G. KAVULICH
 2 one or two judgment debtors or punitive
 3 judgment debtors on an index number,
 4 generally does your office use more than
 5 one marshal?
 6 A. We use two marshals.
 7 Q. Which two?
 8 A. Steven Bigel and Ronald Moses.
 9 Q. Would there be a particular
 10 reason why you would send a punitive
 11 judgment account to one marshal as opposed
 12 to the other?
 13 A. No.
 14 Q. If it is an old judgement.
 15 A. No, I mean, even if it an old
 16 judgment, when I first left Gutman & Mintz,
 17 Ronald Moses was the marshal there. And
 18 because of how that all happened when I
 19 left, I didn't know if I could trust him.
 20 And I think I was paranoid about that. Not
 21 paranoid clinically, but concerned about
 22 that. So I tried using, I don't know
 23 another marshal in Queens, Beinstock. And
 24 I just didn't like the way they treated my
 25 staff. Then we started using marshal

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 1 G. KAVULICH
 2 started using Bigel in 2009, I would think.
 3 Q. So if there are any accounts on
 4 this punitive judgment, this index number
 5 that would be with marshal Bienstock?
 6 A. Depending on when we executed
 7 on it.
 8 Q. A couple of minutes ago you
 9 said, if I understand correctly, marshal
 10 Moses, worked for Gutman & Mintz, what did
 11 you mean by that?
 12 A. He did their work. He did
 13 their income executions and property
 14 executions as of when I left.
 15 Q. As of the date when you left in
 16 about 2007, Gutman Mintz used marshal Moses
 17 for all of their post-judgment collection
 18 activities?
 19 A. Yes, most of it, yes. If it
 20 was upstate someone else.
 21 Q. Upstate they would use someone
 22 else?
 23 A. Yes.
 24 Q. But most of their work was in
 25 New York City?

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1 G. KAVULICH
 2 A. Yes.
 3 Q. So you were afraid maybe
 4 initially that maybe marshal Moses would
 5 what?
 6 A. Give them information. You
 7 know, the wounds were raw. They sued me.
 8 I didn't have a lot of money. Times were
 9 tight. I had worked there for a long time.
 10 I mean on a business level, I sort of
 11 understood what they did, but personally I
 12 was friends with a few of them and I had
 13 been there with them through hard times to
 14 get treated like that.
 15 Q. Is there anything in your
 16 system at your office that would make sure
 17 that a judgment account, even with multiple
 18 debtors, would stay with one marshal the
 19 entire time for collections?
 20 A. Would the system, like, in
 21 other words, when we get a dispute letter,
 22 we click off the thing, we went over this
 23 last time, it will prevent the summons from
 24 going. Is that what you mean?
 25 Q. Plaintiff's 1 is that the index

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1 G. KAVULICH
 2 the property execution, we started
 3 collecting in 2009.
 4 Q. Let me go back to Exhibit 1
 5 again for a second, the information
 6 subpoena with bank restraint. So the basic
 7 template that's Exhibit 1, most of that
 8 test is because the statute requires this
 9 language; right?
 10 A. Yes.
 11 Q. Is the template for Exhibit 1
 12 the same template that you have used since
 13 you opened your office?
 14 A. Well, with some changes.
 15 Q. Some changes in what way?
 16 A. I know when we first opened,
 17 that there wasn't this language about
 18 restraining the exempt monies, don't
 19 restrain if there are exempt monies.
 20 Q. You are looking at the bottom
 21 of the page?
 22 A. Yes. Also on the bottom of the
 23 page response only required if judgment
 24 debtors have ever had a relationship with
 25 your institution.

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 1 G. KAVULICH
 2 in the landlord-tenant action or the index
 3 in the civil court action?
 4 A. The housing court.
 5 Q. So the index, the money
 6 judgment entered against Miss Potter was in
 7 the landlord index?
 8 A. Yes.
 9 Q. So there was one judgement
 10 index number for both Potter and Morales?
 11 A. There was one housing court
 12 case against, brought against them, yes.
 13 There was a housing court case brought
 14 again both persons under one index number,
 15 yes.
 16 Q. So in this case, you used one
 17 marshal to collect against Miss Potter and
 18 a different marshal to try to collect
 19 against Mr. Morales; is that true?
 20 A. No. It doesn't say on here.
 21 Q. In that Exhibit 4?
 22 A. Yes. I am assuming it was
 23 Bigel.
 24 Q. Why do you assume that?
 25 A. Because we used them again for

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 1 G. KAVULICH
 2 Q. That is also on the bottom of
 3 Exhibit 1?
 4 A. Yes.
 5 Q. Other than those two changes?
 6 A. I don't recall, but I don't
 7 think it has been changed much.
 8 Q. So the question is clear. To
 9 your recollection, you don't think there
 10 are any changes in Exhibit 1, in the
 11 template that is Exhibit 1 from the time
 12 you opened your office until now; is that a
 13 fair statement?
 14 A. I don't think so.
 15 Q. You don't think is it a fair
 16 statement?
 17 A. I don't think we made any
 18 changes.
 19 Q. You are saying, and correct me
 20 if I am wrong, you rely on the marshal to
 21 tell your office the balance due on a
 22 judgement; correct?
 23 A. When there an is execution
 24 involved, yes.
 25 Q. By an execution, you mean a

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1 G. KAVULICH
 2 bank restraint or a wage garnishment?
 3 **A. Or a property execution.**
 4 Q. So every time you would use an
 5 information subpoena with a bank restraint
 6 like Exhibit 1, you would only put the
 7 amount of the judgement as the amount
 8 claimed to be due; correct?
 9 **A. Less the payments, the system**
 10 **is supposed to pick that up.**
 11 Q. Let me ask you this: Let's
 12 look at Exhibit 1. Let me ask you a
 13 specific sentence. It says a judgement
 14 which was entered on March 13, 2008, and it
 15 goes on to identify the parties. It says
 16 that judgement of March 2013 in the total
 17 amount of an amount of money, am I reading
 18 that correctly?
 19 **A. Yes.**
 20 Q. Of which that same amount of
 21 money which is \$4,352.74, that is the
 22 amount that remains due and unpaid?
 23 **A. It should be yes, and, it**
 24 **didn't here; correct.**
 25 Q. It is the amount due and unpaid

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1 G. KAVULICH
 2 correct?
 3 **A. It didn't correct.**
 4 Q. The form you use for the
 5 restraining notice from 2007 until the
 6 present time when it says that an amount is
 7 due and unpaid it only uses the judgement
 8 amount; correct?
 9 **A. It did in 2015, yes.**
 10 Q. And it did from 2007 until the
 11 present; correct?
 12 **A. No, now it is in the process of**
 13 **being changed.**
 14 Q. After this lawsuit?
 15 **A. It started around the same time**
 16 **but not because of this.**
 17 Q. So from 2007 until the about
 18 the time of this FDPCA lawsuit when you
 19 sent out a bank restraint knowing that the
 20 bank would send that to the consumer, when
 21 it says in the amount that remains due and
 22 unpaid, that amount is always the amount of
 23 the judgement itself; correct?
 24 **A. Say that again.**
 25 Q. Before you changed your policy,

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 1 G. KAVULICH
 2 as of the date of your signature March 18,
 3 2015?
 4 **A. Correct.**
 5 Q. When you issue the bank
 6 restraint, you fill that out and you send
 7 it to the marshal; correct?
 8 **A. The property execution, yes.**
 9 Q. And the information restraint,
 10 who do you sent that to?
 11 **A. To the bank.**
 12 Q. Exhibit 1 goes to the bank?
 13 **A. Yes.**
 14 Q. And Exhibit 1 gets forwarded
 15 from the bank to the consumer?
 16 **A. Correct.**
 17 Q. As of the date, there the
 18 restraint is sent your communication with
 19 the consumer says that the amount that is
 20 due and unpaid, is actually the amount of
 21 the judgment itself?
 22 **A. Yes.**
 23 Q. So the bank restraints that you
 24 have the bank send to the consumer, that
 25 doesn't credit any payments; is that

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 1 G. KAVULICH
 2 I am talking about the period before you
 3 started changing your policy after this
 4 lawsuit, from when you opened your office
 5 in 2007 up until the, around the time the
 6 FDPCA lawsuit was filed, when you filled in
 7 the restraining notice amount and it says
 8 the amount that remains due and unpaid, you
 9 would always fill in the amount of the
 10 judgment; correct?
 11 **A. Yes, the computer did. We**
 12 **didn't fill it in.**
 13 Q. The computer filled it in?
 14 **A. It is not like somebody sat**
 15 **there and typed in the numbers.**
 16 Q. Because the numbers, for all
 17 these documents, the bank restraints and so
 18 forth, they are all automatically spit out
 19 by the computer?
 20 **A. Yes.**
 21 Q. So for the restraints, when it
 22 is, I just want to be clear, I apologize if
 23 you answered this, I am not sure this is
 24 the question, for 2007 until the day of the
 25 suit, when the restraining notice was sent

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1	G. KAVULICH	1	G. KAVULICH
2	out when they say the balance remains due	2	would be reflected where it says an amount
3	and unpaid, you would only use the judgment	3	remains due and unpaid?
4	amount to fill it in?	4	A. We had asked our IT people, but
5	A. It is a little bit before the	5	they said it was really difficult and it
6	suit but, yes.	6	would have been more expensive.
7	Q. So the amount due and unpaid	7	Q. How much more expensive?
8	when you sent out the restraining notice,	8	A. I don't remember, but there
9	your office does not, in fact, know if	9	wasn't much money left. So it didn't
10	there anything that is due and unpaid for	10	matter as far as budgeting for IT.
11	judgment; is that true?	11	Q. What was your budget for IT?
12	A. No, because if there are no	12	A. What we could afford.
13	monies due, the file would be closed.	13	Q. Roughly speaking.
14	Q. Except here?	14	A. Look, I am a small operation.
15	A. No, that is not true. There	15	I don't have work charts and things like
16	was still money owed by Miss Potter. They	16	that. It was, can we print the summons.
17	were mistakenly believed by human error to	17	Can we do this and that.
18	be owned Mr. Morales.	18	Q. I am trying to figure out why
19	Q. Let me rephrase the question.	19	it would be difficult to calculate that?
20	When the computer spits out the amounts	20	A. I agree with you. That was my
21	remaining, that remains due and unpaid, it	21	question. I don't know. I got "because of
22	would give the amount of the judgement and	22	this and that." I had the same question,
23	it would not credit any payments that were	23	but then again I am not a computer person.
24	made on the judgement?	24	I am not a math person. We don't collect
25	A. Correct.	25	more than what is owed so.
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	153		155
1	G. KAVULICH	1	G. KAVULICH
2	Q. Why not?	2	Q. But you ask for more than what
3	A. Oversight.	3	is owed if there is a payment, you ask for
4	Q. Because when you issued the	4	more than that what is owed?
5	bank restraints your office, in fact, does	5	A. This document says, for
6	not know the amount that is due on the	6	instance, when we talk to people and we are
7	judgment on the date that you use issue the	7	looking at a computer screen and we see
8	bank restraint; is that true?	8	payments, we don't ask for more than that.
9	A. Depending on the circumstances,	9	Q. So a consumer calls and you
10	it could be true.	10	have been garnishing an amount on their
11	Q. Generally that's true; correct?	11	wages, and taking from their bank account,
12	A. Again, depending on the	12	and they are saying I feel like I have been
13	circumstances, it could be true. Sometimes	13	paying forever, how much do I owe?
14	it is not. If there were never any monies	14	A. It happened to me yesterday.
15	corrected, then it would be the judgment	15	Q. You say what?
16	amount plus the interest.	16	A. I say that I need to check with
17	Q. So if any amount was actually	17	the marshal. I will call you back.
18	collected on the judgement, those payments	18	Because usually they don't call out of the
19	would not be reflected in the amount	19	blue. They call because there is some
20	claimed to be due for the restraining	20	other reason involved. Yesterday the lady
21	notices, such as Exhibit 1 you sent to the	21	was being garnished by us twice. I guess,
22	consumer; correct?	22	she was getting paid biweekly, and it was
23	A. Correct.	23	too much for her. So she started off with
24	Q. Why did you not set up your	24	what you just brought us and then the next
25	system so that the current balance due	25	thing was, can I just pay once, you know,
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1 G. KAVULICH
 2 can they garnish once.
 3 Q. So when the information, so if
 4 when you sent the bank restraint to the
 5 bank and it forwards it to the consumer,
 6 the form letters that the bank sends or do
 7 you know says contact the judgment
 8 creditor's attorney to figure out what was
 9 going on, that is one of the things it says
 10 in the form letter?

11 A. You know, I don't know if it
 12 was Monday or Tuesday was the first time I
 13 had ever seen what they actually, I know
 14 that they convey this information, how they
 15 convey it, I never knew. But, again, you
 16 know, I don't even remember, it sort of
 17 looked like this but it wasn't --

18 Q. Exhibit 2?

19 A. Yes, it wasn't an execution.
 20 But the layout, the layout of the page, but
 21 that was the first time I have ever seen
 22 what they send to the judgment debtor. So
 23 I don't know exactly.

24 Q. So what you did see was the
 25 cover letter to the judgment debtor that

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1 G. KAVULICH
 2 minor tweaking; is that right?
 3 A. I would not think so.
 4 Q. You would not think there were
 5 substantive changes?
 6 A. I don't think so.
 7 Q. So then how do you put in,
 8 there is a date remains unpaid in the
 9 amount of \$4,352.74, that's an amount that
 10 is greater than the judgement for this
 11 index number; correct?

12 A. Yes, \$4,352.74, that's right.

13 Q. Where it says with zero dollar
 14 interest, we talked about that, I am not
 15 trying to restate all that, with zero
 16 dollars interest thereon, where does that
 17 number come from, that gets put before the
 18 word interest?

19 A. That is supposed to be the
 20 balance.

21 Q. But correct me if I am wrong,
 22 your office does not know, when it
 23 generates an execution with notice to
 24 garnishee, what the balance on the
 25 judgement account is?

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1 G. KAVULICH
 2 says in one part, if you have any questions
 3 contact the attorney for the judgment
 4 debtor; is that true or something along
 5 those lines?

6 A. It probably did.

7 Q. And that looked like a form
 8 letter that the bank would send out?

9 A. I would think so. I don't
 10 know.

11 Q. Let's go back to Exhibit 2.
 12 The information that is Exhibit 2, the
 13 execution with notice to garnishee; that is
 14 a document that is generated from your
 15 office; correct?

16 A. Yes.

17 Q. It is a document that is signed
 18 by you?

19 A. Yes.

20 Q. This is the same template you
 21 have used from 2007 until the present; is
 22 that correct?

23 A. Yes, probably with some minor
 24 tweaks.

25 Q. No substantive tweaking, just

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1 G. KAVULICH
 2 A. In certain circumstances that
 3 is true. Look, how many cases have we
 4 collected on? A minuscule number
 5 percentage-wise.

6 Q. That you actually collect money
 7 on?

8 A. Right.

9 Q. As opposed to sending them
 10 executions and so forth?

11 A. I am saying in general in the
 12 debt collection business, it is a small
 13 percentage of accounts that you collect on.

14 Q. What is a small percentage?

15 A. We collect on a small
 16 percentage of cases, a very small
 17 percentage. So most of them you are
 18 actually right, right.

19 Q. Most of them I am actually
 20 right what?

21 A. Most of them you are right with
 22 what the balance is.

23 Q. Because most of them you don't
 24 actually collect anything?

25 A. Yes.

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1 G. KAVULICH
 2 MR. KESHAVARZ: Let take a
 3 break.
 4 (Whereupon, a short recess was
 5 taken.)
 6 Q. So we started talking before,
 7 and I am not trying to rehash an argument,
 8 but where it says zero interest thereon is
 9 due, you believe that is the total balance
 10 and not just the interest accruing over
 11 from date of the judgment?
 12 A. Correct.
 13 Q. Where does that zero dollar
 14 come from, where from your computer system?
 15 A. It should not say zero.
 16 Q. What should it say?
 17 A. It shouldn't say zero.
 18 Q. What should it say?
 19 A. It should account for the
 20 payments that have been made against that
 21 judgement.
 22 Q. But correct me if I am wrong
 23 Exhibit 2 is generated by your office;
 24 correct?
 25 A. Yes.

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1 G. KAVULICH
 2 A. Well, it totals the payments
 3 you have to do subtraction.
 4 Q. So your software shows the
 5 amount of the judgements and it shows the
 6 amount of the payments?
 7 A. Correct.
 8 Q. Your software doesn't show the
 9 amount due. You would have to manually
 10 find that out? You would have to manually
 11 subtract that; correct?
 12 A. Well, we actually, if somebody
 13 calls, we will just subtract the amount, if
 14 somebody calls us, I am thrilled they are
 15 calling us so we don't even account for the
 16 interest. Like just using this, for
 17 example, we say you owe \$4,352.74.
 18 Q. And where would you get that
 19 number to tell the consumer that?
 20 A. From here, looking at the
 21 screen, Exhibit 4.
 22 Q. But the screen, tell me from
 23 looking at Exhibit 4 what the balance on
 24 the judgment account is separate from the
 25 interest, if you know?

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 1 G. KAVULICH
 2 Q. And it has a specific date?
 3 A. Yes.
 4 Q. Are you saying that where it
 5 says zero, it should reflect the current
 6 balance on the date you signed the
 7 execution that credits all payments on that
 8 judge?
 9 A. Yes, and then say plus
 10 interest, yes.
 11 Q. But this is what I am trying to
 12 get at, to get clarity on, your office does
 13 not know what the balance on the judgment
 14 account is, correct?
 15 A. We know how much was paid. We
 16 don't know what the interest, what the
 17 interest added to that would be, yes.
 18 Q. So putting aside the interest
 19 for a second. Does your system tell you
 20 what the balance is due on the judgment,
 21 putting aside interest payments?
 22 A. You have to do the math. We
 23 have to manually do the math.
 24 Q. You have to add up all the
 25 payments?

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 1 G. KAVULICH
 2 A. Well, on this we collected a
 3 hundred and fifty-three dollars and change
 4 more than the judgment so this would be a
 5 little bit different.
 6 Q. If the consumer called, Miss
 7 Potter or Mr. Morales called you, you would
 8 tell them more has been paid than the face
 9 value of the judgement, but you don't know
 10 how much?
 11 A. Right, we will check with the
 12 marshal and call you back or e-mail you if
 13 you want.
 14 Q. Does your system differentiate
 15 between payments that are paid by the
 16 judgment debtor Miss Potter and the
 17 punitive judgment debtor Mr. Morales? Does
 18 your system tell you we got this much from
 19 this person and this much from this person?
 20 A. Yes, it will show, I am
 21 referring to Exhibit 4, this says Potter.
 22 This would be Potter. It does say Potter.
 23 It will have income execution with the
 24 judgment debtor's name like it does here.
 25 Maybe with the old system we didn't but the

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<p>1 G. KAVULICH 2 new system does. 3 Q. You are looking at the bottom 4 of page one; correct? 5 A. Correct. 6 Q. You are looking at the list of 7 payments that are made; correct? 8 A. Correct, and also one of the 9 two judgment execution devices and to who 10 that would be, or against whom that would 11 be. The way our system now does it, just 12 make believe we got payments from him; 13 right, it would continue up here and we 14 would know they came from him. 15 Q. So this first line here in the 16 middle of the page, Exhibit 4, does it say 17 total amount collected? 18 A. No, that follows to the left. 19 This says two things. This has the amount 20 collected, which should come after the 21 entry of the property execution or income 22 execution or stipulation device. So say 23 there was nothing here. There was a blank 24 slate for now. It would show income 25 execution John Doe and the amount of the</p>	<p>1 G. KAVULICH 2 system? 3 A. It would be too much of a 4 bookkeeping headache for us to keep track 5 and to follow a particular file and then 6 really leave it to the marshal to do it. 7 So we would use the same marshal if we had 8 two income executions. 9 Q. We talked about the numbers 10 that are put into the documents that you 11 issue to the marshal or to the bank to 12 execute on money, execute to get money on a 13 judgement. If the system is set up and you 14 get payments from one marshal and you send 15 it to another marshal to execute, the 16 system is not set up to account for the 17 balance due from the first marshal; right? 18 A. That is why we generally don't 19 do that. What I see here is, what I think, 20 although it is not indicated, because our 21 old system didn't say which marshal like 22 this one does, it probably went to 23 Bienstock. And since I don't use Bienstock 24 anymore, that is why it was sent to some 25 other marshal. This was the one off.</p>
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<p>164</p> <p>165</p> <p>1 G. KAVULICH 2 judgment. Then it will show the payments 3 from John Doe. And if there were two 4 people on the judgement, it would show Jane 5 Doe going up. 6 Q. Let's assume for a moment, we 7 can go through the document later, let's 8 assume for the moment you, in fact, used 9 two marshals to attempt to collect on this 10 index number. If you got a payment from 11 one marshal, say for Miss Potter, and you 12 got payments from another marshal, say for 13 Mr. Morales, who keeps track of the total 14 amount due on the judgment? 15 A. If that happened, we would 16 send, I can't imagine an instance where we 17 would have two income executions -- it is 18 rare that happens -- we would advise the 19 marshal two in your example how much we had 20 collected from the other debtor, the 21 co-judgment debtor. But I can't think one 22 where we have two income execution where we 23 would use different marshals, because that 24 is where it becomes problematic. 25 Q. Because you wouldn't, know your</p>	<p>166</p> <p>167</p> <p>1 G. KAVULICH 2 Q. You don't know that. How would 3 you know that? You would have to go back 4 through the system and check manually each 5 of the accounts where there was more than 6 one alleged judgment debtor? 7 A. If it happened, it would be a 8 departure from policy, yes. 9 Q. And the policy is to try to 10 send it to one marshal? 11 A. To the same marshal, yes. 12 Q. That's what you mean by policy? 13 A. Yes. 14 Q. When does the marshal tell you, 15 if at any point, what the actual balance is 16 on a judgment? 17 A. I don't think they 18 affirmatively tell us until the judgment is 19 satisfied. But, in other words, every, 20 they send like when we got the payments 21 from Miss Potter on June 5, 2010 it didn't 22 say fifty-five dollars remaining balance, I 23 don't think. But I would have to review 24 the remittent sheets. 25 Q. When the marshal tells you the</p>

1 G. KAVULICH
 2 balance on a certain date, you don't
 3 reflect that balance anywhere in your
 4 records, right?

5 A. I don't think the marshal gives
 6 us the balance as we go along. It will
 7 say, I am making this up, two hundred
 8 dollar payment, a hundred applied to
 9 principal and a hundred applied to
 10 interest.

11 Q. If the marshal is able to keep
 12 track of the balance due, why is your
 13 office not able to do that?

14 A. That's what I said to my IT
 15 people.

16 Q. Is the interest running from
 17 the principal amount of the judgement, from
 18 the date of the judgement, or does the
 19 interest run on the balance due as the
 20 payments are made?

21 A. Does the interest run from?

22 Q. Let's say, for example, you
 23 have a thousand dollar judgment a year ago,
 24 and there is a 9 percent interest, so you
 25 already owe a thousand and ninety dollars.

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1 G. KAVULICH
 2 So if you have a judgement for a thousand
 3 dollars, and a month later you pay nine
 4 hundred dollars, at the end of the year, do
 5 you owe ninety dollars of interest or do
 6 you have to recalculate the amount of
 7 interest, you know?

8 A. Well, interest runs during the
 9 whole, I mean, it does not stop running.

10 Q. But is the interest set up to
 11 run, say in my second example where you
 12 make a payment a month clear, and you
 13 reduce the balance, in a year is the
 14 interest running on the entire amount of
 15 the judgement even though there are
 16 payments made in that one-year period or do
 17 you know?

18 A. If there's a payment and there
 19 is a judgement for a thousand dollars, a
 20 month later --

21 Q. Someone pays nine hundred
 22 dollars.

23 A. I assume it would be a thousand
 24 plus interest for that month less that
 25 payment.

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1 G. KAVULICH
 2 Q. Then they run 9 percent
 3 interest on the hundred dollars?
 4 A. Yes, let's say on a hundred and
 5 three dollars or whatever it was. I don't
 6 know.

7 Q. So the interest would be run on
 8 the decreasing balance; is that correct?

9 A. Yes, it wouldn't be on the
 10 monies that are not owed.

11 Q. Because the thing that confuses
 12 me and has always confused me, when I look
 13 at the bank restraint notices and the
 14 execution notices, it says interest from
 15 the date of the judgement, but it does not
 16 say the interest on what. Is it interest
 17 on the judgment itself or is it interest on
 18 the decreasing balance?

19 A. I would imagine it is less so,
 20 in other words, if you have a five thousand
 21 dollars judgment, you have four hundred
 22 dollars left, I imagine the interest is on
 23 four hundred.

24 Q. Do you happen to know if that
 25 is how the marshal calculates interest?

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171 G. KAVULICH

2 A. Am I metaphysically sure, no,
 3 but I know they are supervised by the
 4 department of investigation and the City
 5 and they are pretty tough, from what I
 6 understand.

7 Q. You don't give the payment
 8 history to the marshal, you just give the
 9 total amount paid; right?

10 A. Usually, yes, we will call
 11 them. What I started doing is, just which
 12 I just learned how to do, is copying it,
 13 cutting it and pasting it.

14 Q. You just started doing that
 15 recently?

16 A. Yes.

17 Q. Up to that point when you
 18 informed the marshal how much was due, the
 19 marshal would take the balance that you
 20 claimed was due and they would run interest
 21 on the full amount of the judgement until
 22 the date of the execution; is that right?

23 A. Say that again.

24 Q. You tell the marshal about the
 25 balance due?

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1 G. KAVULICH
 2 **A. Of five thousand dollars.**
 3 Q. Until recently you didn't tell
 4 him the payment history?
 5 A. Correct, I didn't give the
 6 dates of the payments. But I would tell
 7 him how much they would be.
 8 Q. So the marshal was calculating
 9 interest on the full amount of the
 10 judgement all the way through the date of
 11 the execution?
 12 A. I don't know. You would have
 13 to ask the marshal.
 14 Q. Let's move on to the
 15 landlord-tenant suits. Going back to
 16 Exhibit 5, the collection lawsuit against
 17 Miss Potter and Mr. Morales, you were suing
 18 Miss Potter for the same debt that Rosewall
 19 had a money judgment against her for;
 20 right?
 21 A. Yes.
 22 Q. It was not for rent due after
 23 that judgment; right?
 24 A. No, but it included both.
 25 Q. It included rent due after the

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1 G. KAVULICH
 2 action or were you also suing her for rent
 3 after the entry of the money judgment?
 4 A. Both.
 5 Q. What amount was for the debt
 6 for rent after the landlord-tenant, after
 7 the money judgment against Potter in the
 8 landlord-tenant action?
 9 A. I believe, April and May of
 10 2008.
 11 Q. Why do you say that?
 12 A. Because the judgment was for
 13 monies, according to my recollection, was
 14 for monies due through March and this
 15 summons seeks monies for through and
 16 including March but also additional to
 17 that, April and May of 2008.
 18 Q. If you go down to the third
 19 action, it says "plaintiff seeks to recover
 20 damages from the defendant in the sum of
 21 five hundred dollars representing
 22 reasonable attorney's fees together with
 23 costs and disbursements of this action and
 24 for such other further relief as the court
 25 may deem just." Let me ask you this: Do

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 1 G. KAVULICH
 2 judgement?
 3 A. According to my rudimentary
 4 Spanish, it looks like we scanned the
 5 English version of the summons and the
 6 Spanish version of the complaint.
 7 Q. You don't have the full summons
 8 and complaint for a lawsuit you filed
 9 against Miss Potter and Mr. Morales?
 10 A. Now we do. Now it scans
 11 automatically. It may well very be in
 12 there. Here it is.
 13 Q. What is the Bates stamp?
 14 A. That's 34.
 15 Q. It is Bates stamped Kavulich
 16 parenthesis Morales 34?
 17 A. Yes.
 18 MR. KESHAVARZ: So we are
 19 amending Plaintiff's 5 to add this
 20 subsequent two pages. So Exhibit 5
 21 is now Kavulich 31 through Kavulich
 22 34.
 23 Q. My question is as to Miss
 24 Potter, were you suing her in Exhibit 5 for
 25 the money judgment in landlord-tenant

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 1 G. KAVULICH
 2 you make this five hundred dollar attorney
 3 fees demand for every lawsuit you file to
 4 collect rent?
 5 A. Mostly, yes.
 6 Q. When you make a demand for
 7 attorney fees for five hundred dollars, you
 8 don't know if the lease agreement allows
 9 for the recovery of attorney's fees, do
 10 you?
 11 A. That is why I say mostly.
 12 There are cases where there aren't lease
 13 agreements. And we sue for, rent is now
 14 called, what otherwise is called rent, is
 15 called use and occupancy. In those cases
 16 we don't use ask for attorney fees because
 17 there is no contractual rate. But just
 18 about every lease I have seen, does allow
 19 for it. So the answer is, yes, mostly we
 20 do ask for attorney's fees which ultimately
 21 are waived because it is on default. I
 22 don't remember one case where we collected
 23 legal fees, but the answer is, yes, there
 24 has to be a lease for us to sue.
 25 Q. When you file these

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	176	G. KAVULICH landlord-tenant suits you don't look to see based on a contract, you don't look to see if that specific lease has a provision about the recovery of attorney's fees, do you? A. Yes. Sure. Q. Every time you file a landlord, a suit for collection of rent, you also look at that specific lease at issue to determine whether there are rights to attorney's fees, are you saying that? A. No, I am saying not at the time when we do the summons. That time is actually determined in anticipatorily when the case is entered because, for example, the notes will say, no late or legal fees, no lease, must be use and occupancy. Q. That is put in by Mercedes when she puts it into the system? A. Was. Now it is by me for the last five years. Q. You are saying Mercedes is to interpret a lease agreement to determine whether there is a right to attorney's fees	176	G. KAVULICH correct? A. She is the one who did. Q. While she worked there? A. Yes. Q. While she worked there, that was her responsibility and you didn't look at the leases, you just relied on what Mercedes put in the notes? A. Yes. Q. Based on what the lease said? A. Yes. MR. KESHAVARZ: Please mark this as Plaintiff's 6 for identification. (Whereupon, the aforementioned document was marked as Plaintiff's Exhibit 6 for identification as of this date by the Reporter.) Q. I am showing you what has been marked as Plaintiff's 6, Bates stamped Kavulich 4 through Kavulich 9 and is this the lease upon which you are basing the collection lawsuit that is Exhibit 5? A. I believe so, yes.
	176	DIAMOND REPORTING (877) 624-3287 info@diamondreporting.com	178	DIAMOND REPORTING (877) 624-3287 info@diamondreporting.com
	177	G. KAVULICH in the lease agreement and put that into the computer notes; right? A. She is not supposed to interpret the lease agreement. She is supposed to look at it and see and it says late and legal fees, usually. If I may, most of my clients have rent-stabilized apartments, use the standard form apartment lease. Q. I will ask you to take a look at this in a second. Let me ask, let me just finish up this line of questioning. Mercedes would be the one responsible when she opens up the account on your computer system to review the lease and determine if there is a right to attorney's fees; is that right? A. Yes. Q. You don't just assume there is a right to attorney's fees if it is a written contract? A. No. Q. She is the one who look at those leases to make that determination;	179	G. KAVULICH Q. When you said the standard lease form, what did you mean? A. As it says on the first page there is a standard form of apartment lease that is issued by the Real Estate Board of New York that most landlords use for rent stabilized leases. Q. I want to point your attention to Bates stamped Kavulich 6 and tell me if you can read paragraph 18C3. A. Yeah. Q. So 18C says whether the apartment is re-rented or not, you must pay the owner as damages; right? A. You must pay to the owner as damages, yes. Q. So sub C3 is owner's expenses for attorney's fees; correct? A. Yes. Q. This is the language you use as a basis for demanding five hundred dollars in attorney's fees in almost all of the rent cases that you file based on a written contract; correct?

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1	G. KAVULICH	1	G. KAVULICH
2	A. I believe there is another	2	debt collected; correct?
3	section. I haven't looked at one of these	3	A. Other than the suit fees, yes.
4	from 2006 in a long time.	4	Q. So your client doesn't actually
5	Q. Take your time.	5	incur the attorney's fees; right? He does
6	A. Well, also on page 4 of the	6	not actually pay any attorney's fees, it is
7	lease, Bates stamped page 7 at the top, sub	7	not incurred; is that right?
8	5, "any legal fees or disbursements for	8	A. Depending on the case, maybe
9	illegal actions or proceedings brought by	9	not, but otherwise, yes, of course, he
10	owner against you because of a lease	10	incurs fees. He's losing, he's not only
11	default by you or defending lawsuits	11	just, he's losing money from the monies
12	brought against owner because of your	12	that are owed him that go to us that is a
13	actions." I guess those are the only two.	13	legal fee.
14	Q. But the thing you just read is	14	Q. But that is a fee that would be
15	not one of the remedies?	15	paid if monies is collected?
16	A. You are correct, it is not a	16	A. Correct.
17	remedy. It says fees and expenses as the	17	Q. It is not an obligation that
18	owner's rate, you must reimburse owner for	18	the landlord incurs by hiring you to file a
19	any of the following fees and expenses	19	collection lawsuit?
20	incurred by owner. That is Bates stamped	20	A. Not at that time.
21	page 6 at the bottom paragraph 20,	21	Q. So at the date you file the
22	sub-paragraph A and of that subparagraph 5,	22	collection lawsuit, the landlord has not
23	is what I read just a minute ago.	23	incurred any attorney's fees at that point;
24	Q. When you file civil suits to	24	correct?
25	collect rent, the landlord does not	25	A. Correct.
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	181		183
1	G. KAVULICH	1	G. KAVULICH
2	actually pay you to file a suit, you just	2	Q. How did you come to the number
3	get a percentage of what is collected;	3	five hundred dollars?
4	right?	4	A. It is what they had on my old
5	A. No, that's not true.	5	firm's summons.
6	Q. In what way is that not true?	6	Q. That was Gutman & Mintz?
7	A. Some landlords play the suit	7	A. Yes.
8	fees.	8	Q. To your knowledge, does Gutman
9	Q. Which are the filing fees?	9	Mintz still use that?
10	A. Yes, and process serving.	10	A. I don't know.
11	Q. Other than that when you get	11	Q. So when you filed the civil
12	hired to file suit to collect rent, you	12	lawsuit, Exhibit 5, you knew that there was
13	don't get paid anything by the landlord	13	no judgement against James Morales;
14	other than the costs of court for some of	14	correct?
15	the landlords; right?	15	A. No.
16	A. Right.	16	Q. Why would you file a lawsuit to
17	Q. Is that most of the landlord's?	17	obtain a judgement against a consumer if
18	A. Half and half.	18	you already had a judgment for most of the
19	Q. Do you bill your clients for	19	debt you were seeking to collect?
20	attorney's fees, not expenses but bill your	20	A. There was a momentary lapse of
21	clients for attorney's fees for?	21	consciousness here. Because when the case
22	A. A contingency fee is considered	22	was opened, it seemed as though there was a
23	our legal fee.	23	judgement, and I am reading from the notes.
24	Q. The only thing you charge your	24	I am recollecting myself from Exhibit 4,
25	client is the amount of a percentage of the	25	there was a judgement, and then somehow it
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1 G. KAVULICH
 2 went as if there wasn't a judgement, and
 3 then somebody realized there was a
 4 judgement. So we instructed the process
 5 server not to serve the summons. And we
 6 filed a, which we may or may not have been
 7 done, I don't know off the top of my head,
 8 but then we filed a notice of
 9 discontinuance.

10 Q. You don't recall this, this
 11 basis of?

12 A. Off the notes. I don't recall
 13 this independently.

14 Q. Your testimony is based solely
 15 on the documents in front of you?

16 A. Yes.

17 Q. Not based on your independent
 18 recollection?

19 A. Yes.

20 Q. So after the complaint was
 21 withdrawn, then it says strike S & C we
 22 have FJ; correct?

23 A. Yes.

24 Q. So someone looked at your file
 25 to see if there was a judgement?

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1 G. KAVULICH
 2 Q. Because of the handwritten
 3 notes?
 4 A. No, because, I don't remember
 5 exactly but it states it here in the notes
 6 as Exhibit 1.

7 Q. I am trying to figure out who
 8 on July 23, 2008, realized there was a
 9 final judgement? How do you know it was
 10 you as opposed to someone else on your
 11 staff?

12 A. Because it is indicated, I
 13 updated the note.

14 Q. Where is that indicated?

15 A. To the right.

16 Q. Let me jump back for a second.
 17 When you talked before about one of your
 18 staff, you said they intentionally, and
 19 correct me if I am wrong, put documents in
 20 the wrong consumer's file?

21 A. That is what I am told. I
 22 don't know if it is factually true. Told
 23 is that what I was told.

24 Q. As a factual matter, documents
 25 for one consumer would not be in that

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185 G. KAVULICH

1 A. I did.

2 Q. But looking at your file, there
 3 was, in fact, no money judgement against
 4 Mr. Morales; is that correct?

5 A. In retrospect it is true.

6 Q. Because a computer system in
 7 court would not reflect a money judgment
 8 entered against Mr. Morales in the
 9 landlord-tenant action because, in fact,
 10 there was no such judgement.

11 A. If there is not a judgment it
 12 is very unlikely a court computer would
 13 should that; correct.

14 Q. Would show a money judgement.
 15 If there is no money judgement, the
 16 computer system at the courthouse --

17 A. Is not going to show there is
 18 one; correct.

19 Q. Who made that determination
 20 there was a final judgment?

21 A. After the issuance of the
 22 summons, me.

23 Q. How do you know that?

24 A. We just said that.

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1 G. KAVULICH
 2 consumer's file sometimes?

3 A. Do documents get scanned into
 4 the wrong files sometimes, yes, even by the
 5 guy I have now.

6 Q. What I am trying to get at is
 7 this: There aren't any other documents in
 8 your system other than what you have
 9 produced in this case?

10 A. In this case, yes.

11 Q. Regardless of where it is
 12 filed?

13 A. Right I don't have another file
 14 somewhere else.

15 MR. KESHAVARZ: Mark this
 16 please as Plaintiff's 7 for
 17 identification.

18 (Whereupon, the aforementioned
 19 document was marked as Plaintiff's
 20 Exhibit 7 for identification as of
 21 this date by the Reporter.)

22 Q. I am showing you what has been
 23 marked as Plaintiff's 7. These are two
 24 documents that were produced by your
 25 attorney in this case Kavulich 36 and

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	188		190
1	G. KAVULICH	1	G. KAVULICH
2	Kavulich 37. Are these affidavits of	2	Does that appear to be a Notice Of
3	service in the collections lawsuit filed in	3	Discontinuance you filed in the civil court
4	civil court?	4	action against Ms. Potter and Mr. Morales?
5	A. 35 and 36, yes.	5	A. Yes.
6	Q. So according to these documents	6	Q. Even though Mr. Morales and
7	the summons and complaint was actually	7	Miss Potter were served in a civil court
8	served on Mr. Morales and Miss Potter;	8	lawsuit, your office did not notify either
9	correct?	9	Miss Potter or Mr. Morales that the suit
10	A. Yes.	10	had been discontinued; is that correct?
11	Q. The process server filed that	11	A. No, that is false.
12	return of service and provided a copy to	12	Q. In what way is that false?
13	your office; is that correct?	13	A. We mailed these certified out
14	A. Yes.	14	to the defendants.
15	Q. But you don't know if the	15	Q. You are referencing Exhibit 8?
16	summons and complaint was actually served	16	A. Yes, we mailed notices of
17	on Miss Potter or Mr. Morales. All you	17	discontinuance to the respective parties,
18	know is what the affidavit of service	18	the defendants.
19	claims?	19	Q. But Exhibit 8 does not include
20	A. I know that the affidavit of	20	a certificate of service?
21	served states they were both served of	21	A. No.
22	suitable age and discretion, but was I	22	Q. There is nothing in your
23	there, no.	23	collection notes that indicate that a copy
24	Q. Do you know this process	24	of the Notice of Discontinuance was, in
25	server? Have you used this process server	25	fact, mailed to Mr. Morales or Miss Potter;
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1	G. KAVULICH	1	G. KAVULICH
2	before?	2	correct?
3	A. We don't use this company	3	A. No.
4	anymore. Do I know him? No.	4	Q. No, there isn't any?
5	Q. Which company was that?	5	A. No, there isn't any.
6	A. It was a gentleman by the name	6	Q. Sitting here today you don't
7	of Lawrence Marsh.	7	know if, in fact, Miss Potter or Mr.
8	Q. Is there something on this	8	Morales was, in fact, mailed a copy of the
9	document that tells you that?	9	Notice of Discontinuance; is that correct?
10	A. No, I just know.	10	A. Metaphysically, no. I don't
11	Q. He notarized the signature of	11	know, metaphysically know it was not sent,
12	the process server; correct?	12	but I know it was our procedure.
13	A. It look like Sheryl Marsh to	13	MR. KESHAVARZ: Let's take a
14	me.	14	quick break.
15	Q. Mr. Evans or Mrs. Evans was the	15	(Whereupon, a short recess was
16	process server that worked for Mr. Marsh?	16	taken.)
17	A. Yes.	17	Q. So do you believe any liability
18	MR. KESHAVARZ: Mark this	18	in this case is due to the action or in
19	please as Plaintiff's 8 for	19	action of Gutman Mintz?
20	identification.	20	A. No.
21	(Whereupon, the aforementioned	21	Q. Have you ever attempted to
22	document was marked as Plaintiff's	22	collect on a judgement that has been
23	Exhibit 8 for identification as of	23	vacated or non-existent other than this
24	this date by the Reporter.)	24	case?
25	Q. I am showing you Plaintiff's 8.	25	A. First of all, never
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1 G. KAVULICH
 2 intentionally and not that any come to
 3 mind. I mean Mr. Morales.
 4 Q. Can you think about it and let
 5 us know when we come back.
 6 MR. KESHAVARZ: We have an
 7 agreement that since Mr. Kavulich has
 8 to leave at 2:30 today, we have an
 9 agreement the deposition will
 10 continue at my office at 10:30 on
 11 December 1st, is that our agreement?
 12 MR. PASHKIN: Yes.
 13 Q. The account that comes to you
 14 from Rosewall, you said that come through a
 15 property management company?
 16 A. Yes.
 17 Q. Who did you say that was?
 18 A. Metropolitan Properties.
 19 Q. When I say communications with
 20 Rosewall, those are all communications that
 21 go through this property management
 22 company?
 23 A. They are with the Met
 24 Properties management company.
 25 Q. Any communications about this

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1 G. KAVULICH
 2 you did for Rosewall are how many?
 3 A. A dozen.
 4 Q. Was there a particular reason
 5 you no longer are filing cases on behalf of
 6 Rosewall?
 7 A. Or through Metropolitan, yes,
 8 but it is unrelated to this. We had a
 9 personality thing. He hooked me up with a
 10 good client, I sent him a thank you. I got
 11 him a gift certificate to a restaurant out
 12 on Long Island. I didn't know restaurants
 13 on Long Island so I had to do research and
 14 find out what was a good one, and he never
 15 thanked me and we had words.
 16 Q. Do you know if that is the same
 17 individual --
 18 A. No, it was not the guy that
 19 came here.
 20 Q. I think from his testimony, he
 21 was the only point of contact for Rosewall
 22 cases. He was not --
 23 A. I am saying another part of
 24 Metropolitan. One of the guys, the guy he
 25 works with recommended me to someone else.

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1 G. KAVULICH
 2 case, about the debt and so forth those are
 3 only communications through the property
 4 management company on behalf of Rosewall;
 5 correct?
 6 A. Correct.
 7 Q. Well, let's start from the
 8 beginning. What information have you
 9 provided when started opening this case for
 10 Mr. Morales?
 11 A. We had, it is unrelated to this
 12 because I don't represent them anymore, I
 13 would go to their office physically and I
 14 would go through the files and take out
 15 the, you know, the necessary documents and
 16 copy them and bring them back to my office.
 17 Q. Is that for all accounts that
 18 go through that property management
 19 company?
 20 A. For that particular management
 21 company, yes.
 22 Q. About how many accounts would
 23 do that?
 24 A. Maybe ten.
 25 Q. And the total number of cases

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1 G. KAVULICH
 2 It had nothing to do with that.
 3 Q. Nothing to do with collection
 4 on behalf of Rosewall?
 5 A. Correct.
 6 Q. As this case progressed, and I
 7 guess generally for the Rosewall cases, do
 8 you communicate back and forth with
 9 Rosewall through their property management
 10 company or how does that work?
 11 A. Now, you mean, or back then?
 12 Q. Back when you had cases with
 13 Rosewall and other communications with the
 14 property management company?
 15 A. It was not that many. They
 16 would call us. If you are looking for how
 17 it worked, he would say give me a call,
 18 Gary, I have some cases for you to pick up.
 19 I would go there he would have a list.
 20 Somebody would show me where the files are.
 21 I would sit down at a table and take out
 22 documents and copy them and that was it.
 23 Q. Were they both judgment
 24 accounts and filing suits to collect rents?
 25 A. When I sat down at the table

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1 G. KAVULICH
 2 before I opened the file, I would not know.
 3 There are people who vacated those
 4 properties owing monies.

5 Q. So when you looked through the
 6 file, you would copy, make a photocopy of
 7 the judgment, if there was a judgement?

8 A. If they had it in their file,
 9 yes.

10 Q. Do they normally have a copy of
 11 the court file from the prior
 12 landlord-tenant attorney?

13 A. Sometimes they would, and
 14 sometimes they would not.

15 Q. Would they normally have a copy
 16 of the judgement if there was a judgment
 17 entered?

18 A. Sometimes there were and
 19 sometimes there wasn't.

20 Q. Before got an account to
 21 collect on a judgement, you would check the
 22 file to see if there was, in fact, a
 23 judgement?

24 A. We would check there and then
 25 if there was any sort of indication there,

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1 G. KAVULICH
 2 the only client I did that for,
 3 regrettably, if I had personally handled,
 4 picked up the case, then, no, she would
 5 not. But those were not most of the cases.
 6 In other words, I didn't go and pick up
 7 most of the cases and go through the
 8 clients files. I might go and pick up
 9 files that they put together or receive
 10 files in the mail, or grab them off the
 11 fax. But if I received a case in the mail,
 12 then I would just give it to Mercedes. But
 13 in this particular case, I physically went
 14 there and I physically went through the
 15 client's file and I physically wrote the
 16 note.

17 Q. You say that because that is
 18 how you, that is the process for the
 19 Rosewall accounts?

20 A. For the Metropolitan
 21 Properties, yes, and also reviewing the
 22 documents.

23 Q. So whether there was a
 24 determination whether there was a judgement
 25 or not for Mr. Morales and Miss Potter,

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 2 maybe then we would go to court.

3 Q. So you made the determination,
 4 did you make the determination when you got
 5 the account about going through their file
 6 whether there was a judgment or not, a
 7 money judgement?

8 A. I would say, yes, because
 9 apparently we came up with one here, but
 10 pursuant to my review of the documents
 11 earlier and my contemporaneous notes at the
 12 time, that's what I did come up with. I
 13 don't recall now.

14 Q. Correct me if I am wrong, was
 15 it Mercedes' decision to note whether the
 16 account was a judgment account or a
 17 collections lawsuit account?

18 A. Generally, yes, but on the
 19 cases where I would go and pick up, in
 20 other words, as I mentioned before,
 21 sometimes, well, then, I don't know if we
 22 had any e-mailed cases, they would come in
 23 the mail or we would go and pick them up,
 24 they would fax them. God forbid. If I was
 25 involved in, like I mentioned, this isn't

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 2 that would not have been based on a review
 3 of the housing court computer; right?

4 A. That note was written while I
 5 was sitting in the client's office.

6 Q. What note?

7 A. That I referenced earlier FJ.

8 Q. So you saw a money judgement
 9 against Miss Potter, is that what you are
 10 saying you or don't know?

11 A. Again, I am not the brightest
 12 bulb in the bunch, but I would know
 13 generally if there were two. I screwed up
 14 and wrote FJ, which would have meant it was
 15 against both people. Because these
 16 situations come up or have come up and do
 17 come up now, for instance, we will open up
 18 two cases, like as well we should have done
 19 here, open up a case for, with hindsight
 20 opened up one case against Miss Potter
 21 solely as to the judgement, and opened up
 22 one case, another case as to Mr. Morales
 23 for the non-judgement debt.

24 Q. So for Mr. Morales you would
 25 file a civil court case and for Miss Potter

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 2 you would just go through execution?
 3 **A. Correct.**
 4 Q. There was a stipulation --
 5 **A. From housing court.**
 6 Q. A stipulation of settlement
 7 from housing court?
 8 **A. Yes.**
 9 Q. Was that a basis for you
 10 thinking there was a judgment in this case?
 11 **A. I don't remember but I think**
 12 **that is probably what it must have been. I**
 13 **just read the stip.**
 14 Q. So based on your review right
 15 now, you think maybe that is why?
 16 **A. I think that is why?**
 17 Q. You thought it was a judgement?
 18 **A. There was a judgement, but why**
 19 **I thought it was a judgement against Mr.**
 20 **Morales as well, yes.**
 21 Q. But don't specifically
 22 remember, you are assuming that's the
 23 reason, based on looking at the
 24 stipulation?
 25 **A. Yes.**

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 2 (Whereupon, at 2:30 P.M., the
 3 Examination of this witness was
 4 adjourned.)
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 2 Q. Because when you filed the, my
 3 client claimed the money in the account was
 4 exempt?
 5 **A. No, I don't think he did.**
 6 Q. He didn't file an exemption
 7 claim form?
 8 **A. In this case, no. I think that**
 9 **is Prage.**
 10 MR. PASHKIN: This seems like a
 11 good stopping point. So I will see
 12 you on December 1st at 10:30.
 13 Q. It said in the e-mails with the
 14 marshal, that this is another one and this
 15 is like the other case, about the fact
 16 there was no judgement, do you know what
 17 that was about?
 18 **A. Who said that?**
 19 Q. It was in e-mail with the
 20 marshal? Do you know what the other case
 21 they were referring to was?
 22 **A. I don't know.**
 23 MR. KESHAVARZ: I can check the
 24 e-mail and we can pick that up the
 25 next time. See you shortly.

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 1 G. KAVULICH
 2 D E C L A R A T I O N
 3
 4 I hereby certify that having been
 5 first duly sworn to testify to the truth, I
 6 gave the above testimony.
 7
 8 I FURTHER CERTIFY that the foregoing
 9 transcript is a true and correct transcript
 10 of the testimony given by me at the time
 11 and place specified hereinbefore.
 12
 13
 14
 15
 16
 17
 18 Subscribed and sworn to before me
 19 this _____ day of _____ 20____.
 20
 21
 22
 23
 24
 25

GARY KAVULICH

NOTARY PUBLIC
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1 G. KAVULICH

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1 G. KAVULICH

2 C E R T I F I C A T E

4 STATE OF NEW YORK)
 :
 SS.:
 COUNTY OF KINGS)

7 I, ELIZABETH FORERO, a Notary Public
 for and within the State of New York, do
 hereby certify:

10 That the witness whose examination is
 hereinbefore set forth was duly sworn and
 that such examination is a true record of
 the testimony given by that witness.

14 I further certify that I am not
 related to any of the parties to this
 action by blood or by marriage and that I
 am in no way interested in the outcome of
 this matter.

19 IN WITNESS WHEREOF, I have hereunto
 set my hand this 6th day of December 2016.

22 

23 ELIZABETH FORERO

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